TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 122

ARMANDO PIEMONTE, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 2, 1960
CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

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INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 6, 1960

[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 12819

In Re Certain Grand Jury Proceedings,

In Re Armando Piemonte, Appellant,

vs.

United States of America, Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable William J. Campbell, Judge Presiding.

Appellant's Appendix

[fol. 1]

Docket Entries

8-13-59	Clerk's file copy of transcript of proceedings before the July 1959 Term Federal Grand Jury on August 10, 1939, filed by the Official Court Reporter (Suppressed by order of Judge Campbell 8-13-59)
8-13-59	Filed Petition of R. Tieken, U.S. Atty. with his affidavit and Ex. B
8-13-59	Filed Memorandum in support of petition for an order directing Armondo Piemonte to answer questions before the Grand Jury
8-13-59	Enter order directing Armondo Piemonte to answer certain questions before Grand Jury—Draft —Campbell, J.

8-28-59 Clerk's file copy of transcript of proceedings had before the Honorable William J. Campbell, Chief District Judge on August 13, 1959, filed by the Official Court Reporter

8-14-59 Clerk's file copy of transcript of proceedings had before the July 1959 Term Federal Grand Jury on August 14, 1959, filed by the Official Court Reporter (Suppressed & Impounded)

8-28-59 Clerk's file copy of transcript of proceedings had before the Honorable William J. Campbell, Chief District Judge on August 14, 1959, filed by the Official Court Reporter

8-14-59 Enter order to show cause on Armondo Piemonte —Draft—

[fol. 2]

The Court grants respondents counsel leave to review the suppressed and impounded transcripts filed herein on August 13 and August 14, 1959. Motion of respondent for jury trial denied. Hearing on the order to show cause and the return thereon set for 4 p.m. August 18, 1959—Campbell, J.

8-28-59 Clerk's file copy of transcript of proceedings had before the Honorable William J. Campbell, Chief District Judge on August 18, 1959, filed by the Official Court Reporter

8-18-59 Evidence and arguments heard. The Court adjudges the respondent guilty of contempt for his wilful failure to obey a lawful order of this Court. Respondent committed to the custody of the Attorney General for confinement for 18 months, said sentence to run consecutively to the sentence the respondent is now serving in the U. S. Penitentiary at Leavenworth, Kansas, that is to say, the sentence imposed this day shall commence on the termination of the sentence the respondent is now serving. Respondent remanded to the cus-

tody of the U. S. Marshal for return to the U. S. Penitentiary at Leavenworth, Kansas—Draft—Campbell, J.

8-27-59 Filed notice of Appeal of Armondo Piemonte $5.00 pd
Mailed copy of notice of appeal to U.S. Atty.

10- 1-59 Filed Statement pursuant to Rule 12(d) of the U.S.C.A. 7th Cir. of appellee, U.S.A.

[fol. 3]

10- 5-59 Motion to extend time for filing record in Court of Appeals, to 10-26-59 and motion to relieve record from order of suppression as to Counsel for respondent A. Piemonte are both granted. Counsel for said respondent directed to prepare a draft order and to submit the same for signature—Campbell, J.

Mailed notice to attys. 10-9-59

10-21-59 Order making available certain records, as per Draft—Campbell, J.

Notice mailed to Attys. 10-21-59

10-22-59 Draft order heretofore entered hereon on Oct. 21, 1959, extending time to file record on appeal to Nov. 2, 1959 presented and signed by the Court—Draft—Campbell, J.

Mailed notice to Attys. 10-22-59

10-22-59 Filed Respondent's exhibits Nos. 1 and 2

10-29-59 Filed Stipulation as to contents of record on appeal

[fol. 4]

PROCEEDINGS BEFORE THE FEDERAL GRAND JURY—
Monday, August 10, 1959

1:30 o'clock p.m.

The Grand Jury reconvened pursuant to recess.

Present:

Mr. Max H. Goldschein,
Mr. Robe[redacted] S. Bailey,
Mr. D. Arthur Connelly.

ARMANDO PIEMONTE, called as a witness by the Grand Jury, having been first duly sworn by the Foreman, was examined and testified as follows:

Examination.

By Mr. Goldschein:

Q. What is your name, please?
A. Armando Piemonte, A-r-m-a-n-d-o P-i-e-m-o-n-t-e.
Q. You are now incarcerated in the penitentiary, are you not, Mr. Piemonte?
A. That's right.
Q. Which one?
A. Leavenworth Penitentiary.
Q. You are serving a term of six years?
A. Six years.
Q. And that is for the sale and possession of heroin?
A. Yes, sir.
Q. Mr. Piemonte, that sale and possession of heroin, there were two sales, were there not, one ounce and 95 grains of heroin that you sold for $3100.00, and another sale—the first one was on November 23, 1957, and the sec [fol. 5] ond one was on November 27, 1957, when you sold eight ounces 354 grains for $3,000.00 to Agent Davis; those were the charges in the indictment?
A. Right.
Q. Now, Mr. Piemonte, our information is that you were in the narcotic business—Strike that question.

These two sales of heroin, the first one for $3100.00, and the second one for $3,000.00, on November 23, 1957, and November 27, 1957, will you tell the Grand Jury, please, where you got that heroin?

A. Sir, I am taking the 5th Amendment. I decline to answer any questions under the Constitution, the 5th Amendment.

Q. Mr. Piemonte, you requested this morning that you be permitted to call your counsel.

A. Yes.

Q. And your counsel did come in to see us, and we did call the Marshal and asked the Marshal to let him see you. Now, you did see him, didn't you, your lawyer?

A. Yes, sir.

Q. You had an opportunity to consult with him?

A. Yes, sir.

Q. Didn't your lawyer advise you, Mr. Piemonte, on those matters that you pleaded guilty to in the indictment that you have no Constitutional privilege against self-incrimination?

A. He didn't put it that way. He just says there is a law, something about answering these questions. I don't know.

Q. There is what?

A. Something about a law about answering these questions.

[fol. 6] Q. Yes.

A. I told him I am taking the 5th Amendment, I ain't answering no questions.

Q. Well, all right. I am going to ask the questions, and you can answer them as you like. You know what your rights are, you say, and you use your own judgment on that.

Mr. Piemonte, were you in the narcotics business in 1954?

A. I decline to answer on the ground it may incriminate me.

Q. Do you know a Lawrence Geraci?

A. I decline to answer on the ground it may incriminate me.

Q. Did you sell him 216½ ounces of marijuana?

A. I decline to answer on the grounds it may tend to incriminate me.

Q. Did you, on December 16, 1955, also sell him two ounces of heroin for $900.00?

A. I decline to answer. It may tend to incriminate me.

Q. Mr. Piemonte, do you know John Ormento? They call him "Big John" Ormento, New York City?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Joe Orsini?

A. I decline to answer. It may tend to incriminate me.

Q. Did you ever get any heroin from "Big John" Ormento?

A. I decline to answer. It may tend to incriminate me.

Q. Will you tell the Grand Jury whether or not you got this heroin which you are charged with selling in this indictment, on which you pleaded guilty, the heroin you sold on November 23, 1957, for $3100.00, and the heroin you sold to Agent Davis on November 27, 1957, for $3,000.00?

[fol. 7] A. I decline to answer. It may tend to incriminate me.

Q. I am talking about the heroin in these particular sales. Did you get that heroin from "Big John" Ormento?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Joe Orsini?

A. I decline to answer. It may tend to incriminate me.

Q. Did you get that heroin from Joe Orsini?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Harry Schennault?

A. I decline to answer. It may tend to incriminate me.

Q. Did you get that particular heroin from Harry Schennault?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Mike Condic?

A. I decline to answer. It may tend to incriminate me.

Q. Did you get that heroin from Mike Condic?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Sam Serritella?

A. I decline to answer. It may tend to incriminate me.

Q. Is Sam Serritella in the heroin business?

A. I decline to answer. It may tend to incriminate me.

Q. Did you ever buy any heroin from Sam Serritella?

A. I decline to answer. It may tend to incriminate me.

Q. Did you buy the particular heroin involved in these two sales, involved in the indictment, from Sam Serritella?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Nathan Chiarelli?

A. I decline to answer. It may tend to incriminate me.

[fol. 8] Q. C-h-i-a-r-e-l-l-i?

A. I decline to answer. It may tend to incriminate me.

Q. Is he in the narcotics business?

A. I decline to answer. It may incriminate me.

Q. Did you ever buy any narcotics from him?

A. I decline to answer. It may tend to incriminate me.

Q. Did you buy the heroin involved in this particular case?

A. I decline to answer. It may tend to incriminate me.

Q. (Continuing) From Chiarelli?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Arnold Romano? All these that I just mentioned are New York City.

A. I decline to answer. It may tend to incriminate me.

Q. Arnold Romano, also of New York City?

A. I decline to answer, sir.

Q. Did you buy any heroin from him?

A. I decline to answer. It may tend to incriminate me.

Q. Did you buy this particular heroin referred to the sales referred to in November, 1957, from Arnold Romano?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Peter Christiano?

A. I decline to answer. It may tend to incriminate me.

Q. Did you, within the past ten years, buy any heroin from Peter Christiano?

A. I decline to answer. It may tend to incriminate me.

Q. Did you buy this heroin involved in your sales in 1957 from Peter Christiano?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Sal Nugara?

A. I decline to answer. It may incriminate me.

Q. Did you buy any heroin from him?

A. I decline to answer. It may incriminate me.

[fol. 9] Q. Did you buy the heroin involved in these two sales you made in November of 1957 from Sal Nugara?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Helen Mack?

A. I decline to answer. It may incriminate me.

Q. Referring to the Helen Mack that was indicted with you in this case, involving the sales in November, 1957?

A. I decline to answer. It may tend to incriminate me.

Q. Did you ever sell any heroin to Helen Mack?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Sam Moore?

A. I decline to answer. It may incriminate me.

Q. Did you ever buy any heroin from Sam Moore?

A. I decline to answer. It may incriminate me.

Q. Is Sam Moore in the narcotics business?

A. I refuse to answer. It may incriminate me.

Q. Did you buy this heroin involved in these two sales that you made in November, 1957, from Sam Moore?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Coyit Baker?

A. I decline to answer. It may tend to incriminate me.

Q. Is Coyit Baker in the narcotics business?

A. I decline to answer. It may incriminate me.

Q. Did you ever buy any heroin from Coyit Baker?

A. I decline to answer. It may incriminate me.

Q. Did you buy the heroin in these two sales in November, 1957, from Coyit Baker?

A. I refuse to answer. It may incriminate me.

Q. Howard Frye?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know him?

A. I decline to answer. It may incriminate me.

[fol. 10] Q. Is he in the narcotics business?

A. I decline to answer. It may incriminate me.

Q. Did you ever buy any heroin from him?

A. I decline to answer. It may incriminate me.

Q. Did you buy the heroin in these two counts of the indictment in which you were charged with selling heroin in November, 1957, from Howard Frye?

A. I decline to answer. It may incriminate me.

Q. Will you step outside, Mr. Piemonte?

(Witness excused.)

IN THE UNITED STATES DISTRICT COURT

(Caption—G. J. No. 10507)

PETITION FOR ORDER DIRECTING ANSWERS TO QUESTIONS—
Filed August 13, 1959

Now comes R. Tieken, United States Attorney for the Northern District of Illinois, and presents to this Honorable Court as follows:

1. That the Grand Jury for the Northern District of Illinois is presently conducting an investigation of illegal trafficking in narcotics in said District and elsewhere.

2. That the said investigation involves violation of:

a) those provisions of part I and part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954, the penalty for which is provided in subsections (a) or (b) of section 7237 of such code.

b) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 USC, Sec. 174), or

[fol. 11] c) the Act of July 11, 1941, as amended (21 USC, Sec. 184(a)).

3. That in the judgment of your petitioner, the testimony of Armondo Piemonte is, in the public interest, necessary in said investigation, as evidenced by the Affidavit of your petitioner attached hereto and marked Exhibit A.

4. That this application is made with the approval of the Attorney General of the United States, as evidenced by his letter dated August 11, 1959 attached hereto and marked Exhibit B.

5. That the witness, Armondo Piemonte, was ordered to appear before the aforesaid Grand Jury; and on the 10th day of August, 1959, he was questioned on matters included in the above-referred to statutes and claimed the constitutional privilege against self-incrimination in lieu of answering, and the Court found the claim proper.

Wherefore, it is prayed that this Honorable Court issue its order directing the said Armondo Piemonte to testify and produce evidence before said Grand Jury relative to the afore-mentioned inquiry of said Grand Jury.

And, Further, that this Honorable Court direct that the said Armondo Piemonte shall not be excused from testifying or producing evidence before said Grand Jury on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, in accordance with Sec. 1406, Title 18, United States Code.

[fol. 12]

EXHIBIT A TO PETITION

IN THE UNITED STATES DISTRICT COURT

(Caption—G. J. No. 10507)

AFFIDAVIT.

A. Tieken, being first duly sworn, deposes and says:

1. That he is the United States Attorney for the Northern District of Illinois;

2. That the Grand Jury for the Northern District of Illinois, Eastern Division, is presently conducting an investigation of illegal trafficking in narcotics in said District and in other Districts in the United States of America;

3. That said illegal trafficking in narcotics involves violations of:

(1) those provisions of Part 1 and/or Part II of subchapter A of Chapter 39 of the Internal Revenue Code of 1954 (the penalty for which is provided in subsection (a) or (b) of Section 7237 of such Code);

(2) Subsections (c), (h) or (i) of Section 2 of the Narcotic Drugs Import and Export Act, as amended, being Section 174, Title 21, United States Code;

(3) the Act of July 11, 1941, as amended (being Section 134(a), Title 21, United States Code);

4. Said Grand Jury has reasons to believe that one Armondo Piemonte has information in this possession and can give testimony to this Grand Jury which would assist it in its aforesaid investigation.

5. That it is in the public interest that the said Armondo Piemonte give testimony before the said Grand Jury relative to said investigation and inquiry.

6. That it is in the public interest that the said Armondo Piemonte be granted immunity from further prosecution and shall not be subjected to any penalty or for-
[fol. 13] feiture for or on account of any transaction, matter or thing concerned with or related to his testimony before the said Grand Jury;

7. That he, the said R. Tieken, United States Attorney, makes this assertion and this application before this Honorable Court in complete good faith;

8. That William P. Rogers, Attorney General of the United States of America, approves the action and application made before this Honorable Court.

Further deponent sayeth not.

EXHIBIT B TO PETITION

OFFICE OF THE ATTORNEY GENERAL
Washington, D. C.

August 11, 1959

Mr. Robert Tieken
United States Attorney
Chicago 4, Illinois

Dear Mr. Tieken:

Your request for authorization to apply for an order instructing Armondo Piemonte to testify or produce evidence in accordance with the Narcotic Control Act of 1956 (70 Stat. 567) has been communicated to this Department.

Upon due consideration of all pertinent factors, I find that the testimony and production of evidence by Armondo Piemonte is necessary to the public interest.

Accordingly, you are hereby authorized to make application to the United States District Court for an order instructing the named individual to testify and produce evidence before the Grand Jury and Court in accordance with Section 1406 of the Narcotic Control Act of 1956.

Sincerely,

William P. Rogers
Attorney General

[fol. 14]

IN THE UNITED STATES DISTRICT COURT

(Caption—G. J. No. 10507)

ORDER DIRECTING ANSWERS TO QUESTIONS—August 13, 1959

Application having been made to this Honorable Court by R. Tieken, United States Attorney for the Northern District of Illinois, and Max H. Goldschein, Special Attorney, Department of Justice, said application reciting that the Grand Jury for the Northern District of Illinois is presently conducting an investigation involving violations of:

a) those provisions of Part I and Part II of subchapter A of Chapter 39 of the Internal Revenue Code of 1954, the penalty for which is provided in subsections (a) or (b) of Section 7237 of such code,

b) subsection (c), (h), or (i) of Section 2 of the Narcotic Drugs Import and Export Act, as amended (21 USC, Section 174), or

c) the Act of July 11, 1941, as amended (21 USC, Sec. 184(a));

that the testimony of Armondo Piemonte is necessary in said investigation and is in the public interest that the said R. Tieken makes this application in complete good faith and with the approval of the Attorney General of the

United States of America; that the said Armondo Piemonte has appeared before the said Grand Jury and claimed his constitutional privilege against self-incrimination in lieu of answering its questions,

And the Court finding that the constitutional privilege asserted by Armondo Piemonte was properly asserted in that answers to the questions propounded would tend to incriminate Armondo Piemonte,

[fol. 15] It Is Therefore Ordered that the said Armondo Piemonte if and when called before the Grand Jury to testify and produce evidence before said Grand Jury relative to the aforementioned inquiry of said Grand Jury, that the said Armondo Piemonte shall not be excused from testifying or producing evidence before said Grand Jury on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but shall answer said questions.

This order is made in accordance with Section 1406, Title 18, United States Code.

W. J. Campbell, United States District Court Judge.

Dated: August 13, 1959.

In the United States District Court

* * (Caption—G. J. No. 10507) * *

Transcript of Proceedings of August 13, 1959 —Filed August 28, 1959

Transcript of proceedings had in the above-entitled cause, before The Hon. William J. Campbell, Chief Judge of said Court, in his courtroom, U. S. Courthouse, Chicago, Illinois, August 13, 1959, at 3:15 o'clock, p.m.

Present: Mr. Max H. Goldschein, Special Attorney, Department of Justice, and Mr. Arthur D. Connelly, Assistant United States Attorney, On behalf of the Government.

The Clerk: In the matter of the July, 1959 Grand Jury.

[fol. 16]

COLLOQUY BETWEEN COURT, COUNSEL AND DEFENDANT

The Court: You have a presentment to make?

Mr. Goldschein: Yes, may it please the Court.

The Court: I will hear you.

Mr. Goldschein: May it please your Honor, the July, 1959 Grand Jury requests that I present to your Honor the transcript of testimony of a witness before that Grand Jury, Armand Piemonte.

The Court: Is he here?

Mr. Piemonte: Yes.

The Court: Have him step forward. Proceed.

Mr. Goldschein: Armand Piemonte is now serving a term in the Federal penitentiary on a narcotics charge. He was asked certain questions before the Grand Jury pertaining to where he received or from whom he obtained the narcotics which he was charged with in the indictment upon which he pleaded guilty, and was sentenced to the penitentiary.

Mr. Piemonte claimed constitutional privilege against self-incrimination of all questions propounded to him after he gave his name and address.

Based upon some recent decisions of the Appellate Court so that the Court would not have any misconception of the idea of the Government counsel on this matter, we, too, think that the constitutional privilege claimed by the witness is well taken in this matter.

We would like to offer at this time the transcript of testimony of Mr. Piemonte before the Grand Jury from Pages 620 to 630 of this transcript, and ask that the Court respectfully rule on those questions, and determine whether or not the constitutional privilege is properly invoked.

The Court: Do I understand you to say you think it has been properly invoked?

Mr. Goldschein: We do.

[fol. 17] The Court: That he should not be required to answer?

Mr. Goldschein: Well, we think he could not be required to answer those questions under the privilege. So that the Court will know the purpose of being here this time, if the

Court finds that the question of privilege is here properly invoked and we prefer to go on the basis of a Court's ruling—

The Court: Yes.

Mr. Goldschein: —we intend to ask the Court to grant the witness immunity from prosecution under the 1956 Narcotics Control Act; that we have been authorized by the Attorney General to advise the Court that we are, with the approval of the Attorney General, asking the Court to grant this witness immunity, and order him to answer questions pertaining to the narcotics traffic.

The Court: Very well. Would you please hand up the transcript?

Mr. Goldschein: Yes.

The Court: You may be seated at counsel table.

Pages 620 to '30, you say?

Mr. Goldschein: Yes, sir. That is the first.

The Court: Starting at the beginning?

Mr. Goldschein: Yes, Judge.

The Court: Well, other than the original questions on Pages 620 and '21 and possibly 622 concerning the heroin for the sale and possession of which he is now serving a term—

Mr. Goldschein: Yes.

The Court: I doubt that the privilege against self-incrimination would apply there, since he is already charged with those and has pleaded or has been found guilty and is serving his term; but as far as all of the rest of the [fol. 18] testimony that you referred to, I certainly think that it would tend to incriminate the witness, and that he is correct in his refusal to answer the questions if he desires to assert his privilege under the Fifth Amendment.

Mr. Goldschein: Very well, your Honor.

Now, at this time, with the permission of the Court, I would like to file this petition, so that the Court will have it.

The Court: Yes, you may do so.

Mr. Goldschein: Now, may it please the Court, may I substitute for the testimony that you just read of Mr. Piemonte, a Thermafax copy of that testimony taken from this book—

The Court: Yes. Yes, certainly. That may be filed of record here, and let the same be suppressed. The Grand Jury is still sitting?

Mr. Goldschein: Yes.

The Court: This may be substituted and the Clerk may file it, but have the file suppressed. Very well. I find the petition in proper form. The same is granted.

You are the witness named in the—

Mr. Piemonte: Armand Piemonte?

The Court: —petition. You are Armand Piemonte?

Mr. Piemonte: Yes, sir.

The Court: Very well. Pursuant to the application of the United States Attorney and the Attorney General of the United States, I find that you are a necessary and material witness to the Grand Jury investigation now being conducted by the July, is it, Grand Jury?

Mr. Goldschein: Yes, sir.

The Court: Of this District. And in accordance with the provisions of the Narcotic Control Act, this Court now grants you immunity from prosecution which might arise [fol. 19] from any answers that you give to this Grand Jury concerning the matter of their investigation.

It, therefore, is no longer necessary for you to invoke the protection of the Fifth Amendment to protect yourself from incrimination or subsequent prosecution, because pursuant to the provisions of the Narcotic Control Act, I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury.

Do you understand the order of the Court?

Mr. Piemonte: Yes, sir, your Honor.

The Court: Very well.

Mr. Piemonte: I would like to know if I could get to talk to my lawyer.

The Court: You certainly can. I direct that the witness may be held by the United States Marshal in his office for the remainder of the afternoon, and be allowed to telephone to his attorney and have his attorney come and counsel with him in the Marshal's office in secret any time during the rest of the afternoon.

I direct that the Grand Jury do not resume its interro-

gation until tomorrow morning, after the witness has had an opportunity to confer with his attorney.

Should the witness, upon the reconvening of the Grand Jury, fail to abide by the order of the Court just entered, he is to be brought back to the Court and presented for punishment, or for contempt, for failure to abide by the order of the Court at that time.

Should such occasion be necessary, a citation, of course, will issue. He will be represented by counsel, and a full hearing held before any imposition of penalty.

Mr. Goldschein: For the purpose of the record, may it please the Court, before the witness appeared before the Grand Jury, he asked to be permitted to talk to counsel, and he was so permitted.

[fol. 20] The Court: I noticed that in the transcript, yes. See that he has the same right again this afternoon.

Mr. Goldschein: Yes.

The Court: You may confer with your lawyer, and then depending upon your action tomorrow, will depend on whether or not there is a further Court proceeding.

You are at this time, however, granted immunity from prosecution and directed to answer the questions. You may consult with your attorney, and the Marshal will have him before the Grand Jury—will they be sitting again tomorrow morning?

Mr. Goldschein: Yes.

The Court: Have him before the Grand Jury tomorrow morning.

Mr. Goldschein: Thank you, your Honor.

(Which were all the proceedings had at the hearing of the above-entitled cause.)

Reporter's Certificate (omitted in printing).

[fol. 21]

PROCEEDINGS BEFORE THE GRAND JURY

(Caption—G. J. No. 10507)

Transcript of Proceedings of August 14, 1959 —Filed August 14, 1959

In Re: Grand Jury Investigation, Grand Jury No. 10507, Before The Federal Grand Jury, For The July 1959 Term.

Date: August 14, 1959
10:00 a.m.

Leon M. Golding & Associates, Court Reporters, First National Bank Building, Chicago.

ARMANDO PIEMONTE, recalled as a witness by the Grand Jury, having been previously duly sworn by the Foreman, was examined and testified further as follows:

Direct examination.

By Mr. Goldschein:

Q. Your name is Armando Piemonte, sir?

A. Right.

Q. You are at the present time confined in the Leavenworth Penitentiary and are here on a writ?

A. Right.

Q. Now, Mr. Piemonte, the Judge on yesterday, you recall, Judge Campbell, granted you immunity and ordered you to answer questions propounded to you before this Grand Jury concerning narcotics.

Do you recall that?

A. Right.

[fol. 22] Q. Now I am going to go over some of those questions that you claimed your privilege on and repeat them to you.

Now you were convicted in the Federal Court here in Chicago for the sale of heroin on November 23, 1957 that you got $3100 for and another sale on the 27th day of November 1957 that you got $3,000 for.

Now those were the two sales upon which you were convicted and sentenced to the penitentiary at Leavenworth, is that right?

A. Right.

Q. Now the question:

These two sales of heroin, the first one for $3100 and the second one for $3,000 on November 23, 1957 and November 27, 1957, will you tell the Grand Jury, please, where you got that heroin?

A. I stand on the Fifth Amendment. I decline to answer as it may tend to incriminate me.

Q. Mr. Piemonte, were you in the narcotics business in 1954?

A. I decline to answer. It may tend to incriminate me.

Q. Do you know Lawrence Geraci?

A. I decline to answer. It may tend to incriminate me.

Q. Did you sell him 216½ ounces of marijuana?

A. I decline to answer; it may tend to incriminate me.

Q. Did you on December 16, '55 also sell him two ounces of heroin for $900?

A. I decline to answer; it may tend to incriminate me.

Q. Do you know John Ormento?

A. I decline to answer; it may tend to incriminate me.

Q. Did you buy any heroin from John Ormento?

A. I decline to answer; it may tend to incriminate me.

[fol. 23] Q. Did you ever receive any heroin from "Big John" Ormento?

A. I decline to answer; it may tend to incriminate me.

Q. Will you tell the grand jury whether or not you got this heroin which you were charged with selling in this indictment on which you pleaded guilty,—the heroin you sold on November 23, 1957 for $3100 and the heroin you sold to Agent Davis on November 27, 1957, for $3,000—

A. I decline to answer; it may tend to incriminate me.

Q. I am talking about the heroin on these particular sales.

A. I decline to answer.

Q. Did you get that heroin from "Big John" Ormento?

A. I decline to answer; it may tend to incriminate me.

Q. Do you know John Orsini?

A. I decline to answer; it may tend to incriminate me.

Q. Instead of repeating the whole formula, Mr. Piemonte, if you want to say "same answer," it means the same thing.

A. All right.
Q. Did you get this heroin from Joe Orsini?
A. Same thing.
Q. Same answer?
A. Same answer.
Q. Do you know Harry Schennault?
A. Same answer.
Q. Did you get that particular heroin from Harry Schennault?
A. Same answer.
Q. Do you know Mike Condic?
A. Same answer.
Q. Did you get that heroin from Mike Condic?
A. Same answer.
[fol. 24] Q. Did you ever get any heroin from Sam Seritella?
A. Same answer.
Q. Can you tell the Grand Jury whether Sam Seritella is in the heroin business?
A. Same answer.
Q. Do you know Nathan Chiarelli?
A. Same answer.
Q. Did you ever get any heroin from him?
A. Same answer.
Q. Will you tell the Grand Jury whether or not you know that he is in the narcotics business?
A. Same answer.
Q. Do you know Arnold Romano?
A. Same answer.
Q. Did you ever get any heroin from Arnold Romano?
A. Same answer.
Q. Did you get any of this heroin that you were charged with selling in November of 1957 from Arnold Romano?
A. Same answer.
Q. Do you know Peter Christiano?
A. Same answer.
Q. Did you within the past ten years buy any heroin from Peter Christiano?
A. Same answer.
Q. Did you get this heroin you sold in November of 1957 as charged in the indictment on which you were convicted from Peter Christiano?

A. Same answer.
Q. Do you know Sal Nugara?
A. Same answer.
Q. Did you ever buy any heroin from him?
A. Same answer.
Q. Have you seen him within the past three years?
A. Same answer.
[fol. 25] Q. Did you buy any heroin from him after 1954?
A. Same answer.
Q. Do you know Helen Mack?
A. Same answer.
Q. You were indicted with Helen Mack, weren't you?
A. Same answer.
Q. Did you supply Helen Mack with heroin?
A. Same answer.
Q. Do you know Sam Moore?
A. Same answer.
Q. Did you get any heroin from Sam Moore in the past six years?
A. Same answer.
Q. Will you tell the Grand Jury whether or not Sam Moore is in the heroin business?
A. Same answer.
Q. Will you tell the Grand Jury whether the heroin that you were charged with selling in November of 1957 and for which you are now serving time you obtained from Sam Moore?
A. Same answer.
Q. Do you know Coyit Baker?
A. Same answer.
Q. Did you ever buy any heroin from him since 1954?
A. Same answer.
Q. Is Coyit Baker in the narcotics business now?
A. Same answer.
Q. Howard Frye?
A. Same answer.
Q. Did you buy any heroin from him since 1954?
A. Same answer.
Q. Is he in the narcotics business now?
A. Same answer.

[fol. 26] Q. Do you know Nathanial Spurlark?

A. Same answer.

Q. Of Chicago?

A. Same answer.

Q. Have you supplied him with any heroin prior to going to the penitentiary?

A. Same answer.

Q. Have you since 1954 supplied Nathanial Spurlark with heroin?

A. Same answer.

Q. Do you know Jeremiah Pullings?

A. Same answer.

Q. Of Chicago?

A. Same answer.

Q. Have you supplied Jeremiah Pullings with any heroin?

A. Same answer.

Q. Do you know or will you tell the Grand Jury whether or not you know Spurlark to be one of the largest wholesalers of heroin in the illicit traffic business in Chicago?

A. Same answer.

Q. How about Pullings?

A. Same answer.

Q. Will you tell the Grand Jury whether or not Pullings is one of the largest traffickers in heroin in Chicago?

A. Same answer.

Mr. Goldschein: All right.

Thank you very much.

Will you step outside, please?

(Witness excused.)

State of Illinois,
County of Cook—ss.

Dorothy F. Brackenberg and ....., each for himself and herself being duly sworn, say that they are shorthand reporters regularly and generally engaged in the [fol. 27] practice of their profession in the courts and at other places where the service of expert shorthand reporters are employed; that they as such shorthand reporters in shorthand the proceedings before the July 1959 term

Federal Grand Jury on the ..... day of August as shown in the foregoing pages of transcript;

That these affiants appeared before the Grand Jury and reported the proceedings as shown in the following tabulation:

Dorothy F. Brackenberg, Pages 827 to 836, inclusive;

That these affiants each took down in shorthand and reported such parts of said proceedings so taken down in shorthand and reported by him or her to the best of his or her skill and ability as a shorthand reporter and that the above is a true and complete transcript of the shorthand notes so taken down and reported by each of said affiants.

Dorothy F. Brackenberg

Subscribed and sworn to by each of said affiants before me, this 14th day of August, A. D. 1959, Paul A. Ruke, Notary Public.

[fol. 28]

IN THE UNITED STATES DISTRICT COURT

* * (Caption—G. J. No. 101,507) * *

Transcript of Proceedings of August 14, 1959. —Filed August 28, 1959

Transcript of proceedings had at the hearing of the above-entitled cause, before the Hon. William J. Campbell, Chief Judge of said Court, in his courtroom, U. S. Courthouse, Chicago, Illinois, on Friday, August 14, 1959, at 2:00 o'clock, p.m.

APPEARANCES

Present: Mr. Max H. Goldschein, Special Attorney, Department of Justice, and Mr. Arthur D. Connelly, Assistant United States Attorney, On behalf of the Government;

Mr. James Piragine, On behalf of the respondent, Piemonte.

The Clerk: This is the Grand Jury matter.

The Court: All right. What does the Grand Jury want. What are you waiting on?

Mr. Piragine: I represent Armand Piemonte.

The Court: Will you sit down?

Mr. Piragine: Yes.

The Court: Who is presenting the Grand Jury?

Mr. Goldschein: I am very sorry, your Honor, I didn't know the Court had convened.

The Court: I am quite familiar with the elevator service of this building, and you need not make any apology. You have the transcript?

Mr. Goldschein: Yes, may it please the Court.

The Court: You may hand it up to the Clerk.

Mr. Goldschein: May I ask that this be filed and impounded, sir?

[fol. 29] The Court: The same is received in support of the Government's petition for an order to show cause. It may be filed. It will be impounded.

Mr. Goldschein: May we ask that the one filed yesterday be offered in evidence?

The Court: Yes; yes. That likewise may be received in support of this petition. That has been received, has been filed, and is suppressed.

Mr. Goldschein: Yes.

The Court: Is the witness, Piemonte, in Court?

Mr. Piemonte: Yes.

The Court: Will you step forward?

Mr. Piemonte: Yes.

The Court: I just read the transcript of the proceedings before the Grand Jury this morning.

Do you persist in your refusal to answer these questions?

Mr. Piemonte: Yes, sir.

The Court: Very well. The Grand Jury transcript, as I say, may be filed. The order to show cause and why the witness, Piemonte, should not be punished for deliberate disobedience of a lawful order of this Court will enter and will return for hearing.

You have an attorney representing you, I take it?

Mr. Piemonte: Yes.

The Court: Are you going to represent him?

Mr. Piragine: Yes.

The Court: State your name for the record.

Mr. Piragine: James P. Piragine.

The Court: Do you want to answer the order, or do you want to proceed with the hearing? I will gi[redacted]u a couple of days to get ready. Do you want to proc[redacted]d with the hearing without filing a formal answer to the order to show cause?

Mr. Piragine: I would proceed on the hearing.

The Court: You do not want a formal order?

[fol. 30] Mr. Piragine: No, sir.

The Court: A formal answer to the order to show cause?

Mr. Piragine: No.

The Court: When will you be ready to proceed with the hearing? Incidentally, the order to impound these two transcripts of the Grand Jury is lifted to the effect that the respondent's counsel here may review the transcripts in preparation for the hearing.

Mr. Piragine: Thank you.

The Court: The Clerk is so directed. If you will just go to the Clerk's office any time between now and the date of the hearing, you may review these, to be prepared to argue them at the time of the hearing.

Mr. Piragine: Yes.

The Court: I will not give any extended delay.

Mr. Piragine: No.

The Court: I will give you time to get ready. Would you rather Monday or Tuesday?

Mr. Piragine: I have a matter set specially Monday, which has been set.

The Court: All right. We will set this for Tuesday afternoon.

All right, we will set this for four o'clock, next Tuesday afternoon.

Mr. Piragine: Four o'clock?

The Court: I will have finished my regular call, then, and we can stay as long as necessary for the hearing.

Mr. Piragine: The respondent has asked for a jury trial.

The Court: For a jury trial?

Mr. Piragine: Yes.

The Court: On contempt of Court?

Mr. Piragine: Yes, your Honor.

The Court: The motion is denied.

We will proceed before the Court at four o'clock on Tuesday afternoon. That is the 18th of August.

[fol. 31] Mr. Piragine: Yes.

The Court: Be prepared at that time.

Anything else?

Mr. Piragine: The respondent can have an opportunity to have his sister and brother visit him in the lock-up today, Judge?

The Court: That is up to the Bureau of Prisons. He is here as their client. If he was just here under my order, I could give the permission. I do not know what the rules of the Bureau of Prisons are. He is here as a Federal prisoner.

Is that permitted, Mr. Marshal?

The Marshal: He is supposed to bring a visiting list. I think they have a list who can visit them in prison.

Mr. Piemonte: I have an approved visiting list.

The Court: If these people are on it, it is all right for him to see them?

The Marshal: If Mr. Goldschein says it is all right, it is all right. That is the way the Marshal's office has been operating.

The Court: Well, how often are the prisoners in the prison permitted visits?

Mr. Piemonte: Once a month.

The Court: Have you seen these people once a month?

Mr. Piemonte: The third of this month.

The Court: You are kind of jumping the rule a little bit.

Mr. Piemonte: They are here.

The Court: I don't see any objection to it.

Mr. Piragine: If the Marshal has the list of approved persons.

The Court: I do not know if I have authority to give permission, but if I have I give it.

(Which were all of the proceedings had at the hearing of the above-entitled cause.)

[fol. 32]

IN THE UNITED STATES DISTRICT COURT

(Caption—G. J. No. 10507)

ORDER TO SHOW CAUSE—August 14, 1959

On the 13th day of August, 1959, this Court after reading questions propounded, and witness Armondo Piemonte's answers and claim of constitutional privilege before the Grand Jury of this Court on August 10, 1959, found there was a real and substantial danger of incrimination; and ordered said transcript filed; and

Upon application of the United States Attorney, approved by the Attorney General, asking that the witness be granted immunity under the Narcotics Control Act of 1957 (Title 18, Sec. 1406, U.S.C.) after hearing found that the application was approved by the Attorney General, was filed in good faith, was in the public interest, and proper; and

Ordered the witness Armondo Piemonte to return before the said duly constituted Grand Jury impaneled July 1959 and answer the questions propounded to him on August 10, 1959, concerning the violation of the narcotics laws of the United States, to wit:

a) those provisions of part I and Part II or subchapter A of Chapter 39 of the Internal Revenue Code of 1954, the penalty for which is provided in subsections (a) or (b) of section 7237 of such code,

b) subsections (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 USC, Sec. 174), or

c) the Act of July 11, 1941, as amended (21 USC, Sec. 184(a)),

which the Grand Jury was investigating and granted him immunity as provided in Title 18, Section 1406, U.S.C. [fol. 33] Thereafter, on the 14th day of August, 1959, in open court, in the presence of the witness Armondo Piemonte, the Court was advised by counsel for the Government in the presence and on behalf of the Grand Jury that the said witness Armondo Piemonte returned before the Grand Jury on that day pursuant to the Order of the Court and was asked the questions propounded to him on the 10th day of August, 1959, which the Court had ordered him to answer, but that he refused to answer said questions and that counsel for the Government filed as an exhibit the Grand Jury Transcript of the questions propounded to him on that day.

The said Armondo Piemonte is therefore ordered to show cause why he should not be held in criminal contempt:

(a) for wilfully, deliberately and contumaciously shutting off and blocking the search for truth, thwarting the investigation of the said Grand Jury in the matter hereinbefore set out and obstructing the administration of justice;

(b) for wilfully, deliberately and contumaciously disobeying and resisting the lawful order and command of this Court by wilfully and deliberately refusing to obey the order of this Court to answer before the Grand Jury the questions that had been propounded to him as aforesaid.

Campbell, United States District Judge.

[fol. 34]

IN THE UNITED STATES DISTRICT COURT

(Caption—G. J. No. 101,507)

Transcript of Proceedings of August 18, 1959 —Filed August 28, 1959

Transcript of proceedings had at a hearing before the Hon. William J. Campbell, Chief Judge of said Court, in his courtroom, U. S. Courthouse, Chicago, Illinois, on Tuesday, August 18, 1959, at 4:00 o'clock p.m.

APPEARANCES

Present: Mr. Max H. Goldschein, Special Attorney, Department of Justice, and Mr. Arthur D. Connelly, Assistant United States Attorney, On behalf of the Government;

Mr. James Piragine, On behalf of respondent, Armand Piemonte.

COLLOQUY BETWEEN COURT AND COUNSEL

The Clerk: In the grand jury matter, No. 101,507, in the matter of certain grand jury proceedings.

Mr. Goldschein: The Government is ready.

The Court: You may proceed. I think your prima facie case is in on the two transcripts already filed, isn't it?

Mr. Goldschein: Yes.

The Court: You stand on the prima facie case?

Mr. Goldschein: Yes, sir, on the transcript already filed, the order of the Court, the so-called order.

On this order to show cause, may it please the Court, on the third line of the second paragraph there is a typographical error.

It reads:

"The Narcotic Control Act of 1957"

and it should have been "1956."

May I correct that?

[fol. 35] The Court: Leave to correct it on its face. You may do so after the hearing.

The Government's prima facie case in the matter before the Court is in on the transcripts already filed which have been made available to counsel for the respondent. I will hear the respondent's case.

Mr. Piragine: Yes, your Honor.

The Court: First of all, before we proceed, does the respondent persist in his refusal to obey the order of the Court to answer?

Mr. Piragine: Yes.

The Court: Very well, I will hear you.

Mr. Piragine: I would like to make a brief statement at this time, that I did converse with him after your Honor authorized the Clerk of this Court to disclose the transcript of the Grand Jury proceedings for August 10 and August 14, 1959. Prior to that time, as I understand, he did not have the aid or assistance of counsel, and I was called, as your Honor knows, and appeared before your Honor on the 14th of August.

The Court: That is right. That is prior to this hearing and I made these transcripts available to you so that you could be prepared. You may now proceed.

Mr. Piragine: After reading the transcript, I conversed with the respondent with reference to the questions as appearing in the transcript.

The Court: Yes.

Mr. Piragine: At this time, if the Court please, I would like to have marked as Respondent's Exhibit, Page 4, which is a part of the Chicago American edition, Friday, August 14, 1959, of the Chicago American, Diamond Final Edition, which is, I take it your Honor takes judicial notice, is a daily paper in Metropolitan Chicago area.

The Court: I buy it every afternoon.

[fol. 36] Mr. Piragine: All right, Judge, I have this marked as Respondent's Exhibit No. 1, for identification, particularly Page 4; also Page 4, of Part 1 of the Chicago Tribune, taken from the City Final, dated Saturday, August 15, 1959.

Would you please have this marked as Respondent's Exhibit No. 2, for identification.

The Court: Well, what is it?

Mr. Piragine: I would like, if I may for the record, read the portion which—

Mr. Goldschein: May I at this time—

The Court: Are you offering it in evidence?

Mr. Piragine: Yes, your Honor.

The Court: Hand it up. I don't know what they say. If they need to be read, I can read them.

Two articles?

Mr. Piragine: Yes, your Honor.

The Court: Hand them up.

Mr. Piragine: That is a statement from those papers, those editions.

The Court: What article is it?

Mr. Piragine: Which one is your Honor looking at?

The Court: "The second dope witness promised immunity," is that the one you mean?

Mr. Piragine: Yes.

The Court: That is on Page 4 of the American, issue of August 14th. That is your Respondent's Exhibit 1, for identification.

And the other is the Tribune of August 15th, Page 6, Part I. I assume you are referring to the article where it says, it is captioned, "U. S. Witness refuses to name dope sellers." Is that it?

Mr. Piragine: That is correct.

The Court: All right.

[fol. 37] Very well, what is it you want to say about these?

Mr. Piragine: I would indicate to the Court that there is published in those two exhibits which I have had marked 1 and 2 of respondent's, the questions or a question which was asked of this respondent.

The Court: You be seated. You speak loud enough so that he can hear you.

Mr. Piragine: I am sorry. Each of these articles pertain to the question which was asked by the Grand Jury of this respondent.

I would further like to state for the record that pursuant to your Honor's order, that I did not read the transcript until 2:20 p.m. when Mr. Johnson, the Clerk of this Court, yesterday, on August 17, 1959, gave it to me.

Now, this is one of the bases, your Honor, of the so-called secrecy that should be for any witness who is called before the Grand Jury.

The Court: As much as either of those articles contains was discussed in open Court. The question wasn't read. I doubt if that is taken in haec verba from the transcript, either.

Mr. Piragine: I don't know if it was taken word for word, Judge, but if I may read for the record the second paragraph referring to Respondent's Exhibit 2—

The Court: It won't be necessary. If you want to offer them, I will receive them in evidence. I have already read them. They were handed up.

Mr. Piragine: The questions were published in the two exhibits which I have had marked on behalf of the respondent.

The Court: What else do you want to say? Any further evidence?

Mr. Piragine: I would like to put the respondent on.

The Court: Sir?

[fol. 38] Mr. Piragine: I would like to put the respondent on.

The Court: Certainly. Any evidence on behalf of the respondent will be received at this time.

Raise your right hand and be sworn.

Armand Piemonte, the respondent herein, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Piragine:

Q. State your name, please.
A. Armand Piemonte.
Q. You are a respondent of the July, 1959 Grand Jury?
A. Yes, sir.
Q. At the present time, where are you residing?
A. Leavenworth Penitentiary.

Q. You are the Armand Piemonte who was sentenced to six years by his Honor, Judge Perry, on February 24, 1959?

A. I was sentenced in November, but I gave myself up in February.

Q. You started to serve time in February?

A. Yes.

Q. On August 10, 1959 and August 14, 1959, you appeared before the July Federal Grand Jury in this building, is that correct?

A. Correct.

Q. At that time you moved for your constitutional rights, under the Constitution of the United States?

A. Yes.

Q. Subsequent to your appearance on August 14, 1959, you then had an opportunity to converse with me as your attorney, is that correct?

A. Correct.

[fol. 39] Q. Now, will you tell his Honor, Judge Campbell, the basis for your refusal to answer questions propounded to you before the Federal Grand Jury on August 10th and August 14, 1959?

A. Well, I am doing time in the penitentiary. I fear for my life. I fear for the life of my wife, my two stepchildren, and my family. I can't do something like that. I want to live, too.

Q. What is your wife's name?

A. Eleanor.

Mr. Goldschein: We are objecting, if the Court please.

Mr. Piragine: No, what is his wife's name?

Mr. Goldschein: I am sorry.

By the Witness:

A. Eleanor.

By Mr. Piragine:

Q. What does your family consist of?

A. We have two children.

Q. Will you state their names and ages?

Mr. Goldschein: We are objecting, may it please the Court, to what his family consists of, or anything concerning his family. He is the witness before the Grand Jury.

The Court: Overruled.

By Mr. Piragine:

Q. Would you answer that, please? The Judge has permitted you to answer.

A. Bob Healey, 15 years old and Mary Ann Healey, thirteen.

Q. Are these your children or the children of your wife by a previous marriage?

A. The children of my wife by a previous marriage.

Q. Do they live with Mrs. Piemonte?

A. Yes, sir.

[fol. 40] Q. Prior to your incarceration, you were supporting both children and your wife?

A. I was helping.

Mr. Piragine: You may cross examine.

By Mr. Goldschein:

Q. Mr. Piemonte, you were in the narcotics business since 1954, were you not?

A. No, sir.

The Court: You should confine your cross examination to the subject of the direct examination.

Mr. Goldschein: No questions.

The Court: Sir?

Mr. Goldschein: No questions.

The Court: Very well.

Mr. Piragine: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Further evidence on behalf of the respondent?

Mr. Piragine: Nothing further.

The Court: Rebuttal, if any, by the Government, on behalf of the Grand Jury?

Mr. Goldschein: None, sir.

The Court: Very well. I will hear you briefly in argument. You may speak first.

ARGUMENT OF MR. GOLDSCHEIN

By Mr. Goldschein:

May it please the Court, the Grand Jury, the July 1959 Grand Jury, may it please the Court, is making an inquiry to determine the widespread narcotic activity in this area, in violation of the Federal Statutes.

The Narcotic Control Act of 1956 was passed to aid in this inquiry. Courts and the Congress can do no more than grant an individual immunity against self-incrimination. Up until that time there was no means by which the Grand Jury could get to those higher-ups in the narcotic traffic.

[fol. 41] With the aid of this 1956 Narcotic Control Act, the Government is supposed to try and develop testimony as to who are the importers, the distributors of this heroin.

The Grand Jury has brought a witness in who cannot be incriminated any further. He is not only serving time, but he cannot serve any more time or be prosecuted any further for the testimony he gives. The fact that he is afraid means nothing. It is a device used by people like him to keep from testifying. He believes he is a stand-up guy and can just thwart the law.

May it please the Court, if this witness can get by without any additional punishment after he defies the Court on a matter of this sort, then the Narcotic Control Act of 1956 is useless and Grand Juries are impotent of making any inquiry.

We think, may it please the Court, that the only way that the narcotic traffic in this area can be curbed at all is by compelling people, traffickers, wholesalers and jobbers like this man—should, by the Court, be compelled to talk, because there isn't any other way that they can be reached, and the Congress has done everything that it can do by creating this or making this immunity statute.

The Court: I will hear argument on behalf of the respondent.

ARGUMENT OF MR. PIRAGINE

Mr. Piragine: May it please your Honor, Judge Campbell, and Mr. Goldschein, I disagree with Mr. Goldschein. He states in this Court that this is something that this respondent has stated in this Court. I know, your Honor, has been a former United States Attorney in this District and many years on the bench. This man was in the traffic. He is paying his debt to society today, your Honor, when Judge Perry sentenced him to six years.

There is no willful attempt on his part to disobey the order of this Court, and it is not just being used. Your Honor knows of many instances of the lives of families, [fol. 42] and his own. The fact that he is in the Federal Penitentiary does not give him 100 per cent security; that his life is in danger; his loved ones; his mother, brothers, and the balance of his family, outside of his immediate family, consisting of his wife and children; that he has been serving since February six years.

Mr. Goldschein classified him as a wholesaler. There is no such evidence in this record, if the Court please. This defendant is just here for one purpose. We are appearing here today, and we also contend that by the immunity statute in effect circumventing the purpose and effect of the fifth amendment of the Constitution, as Congress has seen fit in each and every instance of every criminal statute in the Federal Code to pass and enact an immunity statute, and I believe this particular immunity statute under the Narcotic Control Act of 1956 has not been tested by the Supreme Court of the United States; and that if Congress were to pass an immunity statute in each and every instance, then we may just as well erase the fifth amendment from the Constitution.

As your Honor well knows, the fifth amendment to the Constitution was passed for the innocent as well as the guilty and I say your Honor—

The Court: I thought that applied to self-incrimination. Is there anything in the fifth amendment to protect the families or children of people who are asked to testify? I thought that was a privilege against self-incrimination.

Mr. Piragine: That is correct.

The Court: That is the only privilege this man asserted before the Grand Jury.

Mr. Piragine: He asserted—

The Court: I have granted him immunity from incrimination.

Mr. Piragine: Yes.

[fol. 43] The Court: Therefore, that is no longer in the case, is it?

Mr. Piragine: I understand; I understand, Judge.

As I indicated on August 10th and the 14th, that he invoked his constitutional rights.

The Court: I then granted immunity to protect those rights.

Mr. Piragine: That is right.

I say this, that this defendant was under the misapprehension that he is using the fifth amendment for protecting himself, but the real basis, he is here for contempt of an order of this Court, and that the basis of it is his fear of safety for himself and his family. It is not willful disobedience, if the Court please.

The Court: Possibly he should have thought of that before he got in this type of business for which he is now serving a sentence. I fail to see the materiality either of the evidence that you have adduced this afternoon or by your argument.

How about the lives of the people that are endangered by the narcotic drug traffic? How about the lives of the enforcement officers that are constantly in danger. By the type of business in which this man voluntarily, by reason, for all I know, is his present conviction. He voluntarily entered this type of business. No one told him, and there is no provision of the United States Constitution that says he has to engage in illegal traffic of narcotics. That is a dangerous business to begin with.

Neither the Constitution, nor Congress, nor this Court put him in that business. He put himself in that business. This is one of the dangers. He should have realized it before he started.

I fail to see the materiality of your argument. Have you any argument at all as to why the defendant should

[fol. 44] not be adjudged in contempt for willful failure to obey the lawful order of this Court.

Mr. Piragine: I will re-iterate, Judge, I don't think under the circumstances that when he appeared before the Grand Jury on the two dates, August 10th and the 14th, that before he was apprised of the entire thing, I respect your Honor, that your Honor did apprise him of his rights, and also the immunity.

I still say that I believe that after talking to him, he was under a misapprehension that his real basis for his disobedience is his fear that is imbedded.

The Court: It may well be his real reason, but that is not a legal reason for failure to obey my order.

Mr. Piragine: That is all I have to present, Judge.

The Court: Very well, do you persist in your refusal to obey the order of this Court to testify before the Grand Jury?

Mr. Piemonte: Yes, sir.

The Court: Rise, and come to the bar.

I will hear the Government in aggravation of punishment. The respondent is adjudged guilty of contempt of this Court for willful failure to obey a lawful order of this Court, duly entered.

Anything in aggravation of punishment? There will be a judgment of guilty on the order heretofore entered.

Mr. Goldschein: Yes, may it please the Court.

We urge the Court to impose such sentence on the defendant, and we know the sole power to punish lives rests with the Court, but we ask the Court to impose such a punishment as will not only be a lesson on this defendant but will also act as a reminder to all others who are going to appear before the Grand Jury to testify under the order of this Court, and be granted immunity under an order to testify, unless there is—

The Court: I understand there is a limit of six months on punishment for contempt?

[fol. 45] Mr. Goldschein: May it please the Court, I just received an opinion from the Ninth Circuit, in the Collins case, wherein Judge Matthews sentenced him to three years in the penitentiary to run consecutively or to commence

at the expiration of his present sentence, which was affirmed by the Ninth Circuit.

The Court: That is Matthews?

Mr. Goldschein: Judge Matthews was the trial judge.

The Court: The last one where he ran a concurrent sentence on contempt has been reversed by the Supreme Court.

Mr. Goldschein: That was in a constitutional privilege matter.

The Court: I remember the case well, one of the Communist cases.

Is it your contention that the six months' limitation does not apply?

Mr. Goldschein: It does not apply here.

The Court: Have you any authority on that?

Mr. Goldschein: I have two cases, may it please the Court—three of them, as a matter of fact, the Podusco case, in 255 Federal Reporter, 2nd series. The Podusco case, I tried that case in Detroit. It was affirmed by the Sixth Circuit and Judge Martin delivered the opinion in that case. He got two years.

The Court: What were the circumstances?

Mr. Goldschein: Exactly like this, the Narcotic Control Act, immunity.

The Court: Refusal to obey?

Mr. Goldschein: Obey the order of the Court.

Then there are two other cases, the Valucci case and the Corona case, also from the Sixth Circuit, per curiam opinion, where they also got two years, exactly the same. I tried those cases before Judge—I am sorry, I don't recall. In Detroit.

[fol. 46] The Court: Yes.

Mr. Goldschein: Affirmed by the—

The Court: The Court of Appeals of that Circuit?

Mr. Goldschein: The Court of Appeals, Sixth Circuit.

The Court: I will hear you in mitigation.

Mr. Piragine: Judge, this defendant is 44 years of age. As you know, he is married and has two children by a previous marriage of his wife.

He has, I believe, four years on the present sentence and as your Honor knows, there is no parole on the sen-

tence he is serving now. I ask your Honor to take that into consideration, the defendant's age, the present sentence he is now serving, and to deal with that situation, your Honor.

I know your Honor always has been fair. I don't know as I have read these cases. One was a per curiam opinion in the Corono case. I don't know, but in view of the fact Mr. Goldschein represented the Government, whether it was a situation where the defendant was serving time, I don't know.

Mr. Goldschein: Yes, sir.

The Court: Was he also incarcerated at the time?

Mr. Goldschein: Yes, sir.

Mr. Piragine: It is a per curiam case or opinion.

The Court: You have authority to the contrary?

Mr. Piragine: No, I don't have any at present, Judge.

The Court: Apparently a 6-month limitation does not apply in cases of this kind.

Mr. Goldschein: No, sir.

The Court: Anything the defendant cares to say before the imposition of sentence?

Mr. Piemonte: No, your Honor. I have a lot of time to do yet. I will be close to 50 when I get out of this. I got to go to work. I will have to do something when I get out.

[fol. 47] The Court: I will still give you a chance to go back and testify if you want to.

Mr. Piemonte: I would rather not.

The Court: I will set aside this judgment.

Mr. Piemonte: Your Honor, I am not trying to defy you or get smart, or anything like that. I just can't.

The Court: Very well, you must pay a penalty for it.

Mr. Piemonte: Well—

SENTENCE

The Court: On the judgment heretofore entered, the defendant is sentenced to the custody of the Attorney General of the United States to be incarcerated in the penitentiary of the United States for a term of eighteen

months, said term to run consecutively to the sentence he is now serving in the United States Penitentiary at Leavenworth; That is to say, this sentence shall commence upon the termination of the sentence which he is now serving.

The respondent is remanded to the custody of the Marshal to be returned to the penitentiary from whence he came.

Mr. Piragine: Your Honor, just one request. He has asked me. I don't know whether your Honor—Mr. Goldschein, he was asking me, after this sentence, if there is any possibility of being taken out of the County Jail as soon as possible.

The Court: He will not be needed here any more. The Marshal will return him to Leavenworth forthwith, or as soon as the Marshal can make it. There is no need for keeping him in the County Jail.

Mr. Goldschein: No.

The Court: Return him to Leavenworth.

(Which were all of the proceedings had at the hearing of the above entitled cause.)

[fol. 48]

IN THE UNITED STATES DISTRICT COURT

(Caption—G. J. No. 10507)

JUDGMENT AND COMMITMENT—August 18, 1959

On this 18th day of August, 1959 came the attorney for the government and the respondent Armando Piemonte appeared in person and by counsel for hearing on th order entered on the respondent, Armando Piemonte, to show cause why he should not be held guilty of contempt of Court and the return thereon and the hearing proceeds and the Court having now heard the evidence adduced and the arguments presented and being fully advised

It Is Adjudged that the respondent is guilty of contempt for his willful failure to obey a lawful order of this Court, and

It Is Adjudged that the respondent Armando Piemonte is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Eighteen (18) Months, said sentence to run consecutively to the sentence the respondent is now serving in the United States Penitentiary at Leavenworth, Kansas, imposed by this Court *i.e.*; the sentence imposed this day shall commence on the termination of the sentence the respondent is now serving, and it is

Ordered that the respondent be and hereby is remanded to the custody of the United States Marshal for return to the United States Penitentiary at Leavenworth, Kansas, and

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

William J. Campbell, United States District Judge.

The Court recommends commitment to:
August 18, 1959

[fol. 49]

In the United States District Court

* * (Caption—G. J. No. 10507) * *

Notice of Appeal—Filed August 27, 1959

Name and Address of Appellant:

Armando Piemonte
U. S. Penitentiary
Leavenworth, Kansas

Name and Address of Attorney for Appellant:

Frank W. Oliver
33 North La Salle Street
Chicago 2, Illinois

General Statement of Offense:

Contempt of court in refusing to respond to questions propounded by the Grand Jury.

Judgment or Order:

On August 18, 1959, the respondent, Piemonte, adjudged guilty of contempt of court, and sentenced to a term of imprisonment of 18 months.

Place of Confinement:

U. S. Penitentiary
Leavenworth, Kansas.

The above named defendant hereby appeals from the above stated judgment.

Armando Piemonte, Respondent-Appellant, By: Frank W. Oliver, His Attorney.

[fol. 50]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Judge Robson
Criminal Calendar

No. 59CR466
Vio: Section 174,
Title 21, United States
Code.

UNITED STATES OF AMERICA,

v.

SHELDON R. TELLER, MILES J. COOPERMAN, RICHARD E. AUSTIN, JEREMIAH HOPE PULLINGS, alias Jerry Evans, ARMANDO PIEMONTE, SIMON H. STALLSWORTH, MORRIS WHEELER ROLLER, DOLORES KEEBY, alias Dee Dee, JAMES A. WHITE, FLORINE WHITLOW JOHNSON, alias Jayree Emery, ALICE M. GILMORE, alias Mona Evans, GLADYS DAVIS, alias Gladys White, WILLIAM L. JONES.

INDICTMENT—Filed September 2, 1959

The July 1959 Grand Jury charges:

1. On or about the first day of August, 1954, and continuously thereafter up to and including the date of this

indictment, in the Northern District of Illinois, Eastern Division, and within the jurisdiction of this Court, the defendants,

Sheldon R. Teller,
Miles J. Cooperman,
Richard E. Austin,
Jeremiah Hope Pullings, alias Jerry Evans
Armando Piemonte,
Simon H. Stallsworth,
Morris Wheeler Roller,
Dolores Keeby, alias Dee Dee
James A. White,
Florine Whitlow Johnson, alias Jayrece Emery
Alice M. Gilmore, alias Mona Evans
Gladys Davis, alias Gladys White
William L. Jones

and the following co-conspirators not named as defendants herein: Otis Sears, Earthie Lee Grace, Lydia Shorten, Jesse Maroy, Moses Winston Mardis, Maple Shorten, John Paul Dispensa, James Vincent Chiaro, James Jackson, and Bobby Ritchie; unlawfully, wilfully and knowingly com- [fol. 51] bined, conspired, confederated and agreed together and with each other and with divers other persons to the Grand Jury unknown to fraudulently and knowingly import and bring into the United States and territory under its control and jurisdiction narcotic drugs contrary to law and to receive, conceal, buy, sell and facilitate the transportation, concealment and sale of such narcotic drugs after being unlawfully imported and brought in, knowing the same to have been imported and brought into the United States contrary to law; in violation of Title 21, United States Code, Section 174.

2. That it was further a part of said conspiracy that the said defendants and co-conspirators would procure unlawfully quantities of heroin and cocaine, the amounts of which are to the Grand Jury unknown, in places within and without the Northern District of Illinois.

3. That it was further a part of said conspiracy that the said defendants and co-conspirators would sell and dis-

tribute unlawfully within and without the Northern District of Illinois quantities of heroin and cocaine, procured as aforesaid, the amounts of which are to the Grand Jury unknown.

4. That at all times herein referred to the defendants, Sheldon Teller and Richard Austin, were employed as police officers by the City of Chicago, Illinois.

5. That the defendant, Miles Cooperman, was employed as a police officer by the City of Chicago, Illinois, between August 1, 1954 and October 16, 1958.

6. That it was further a part of said conspiracy that the defendants, Sheldon Teller, Miles Cooperman and Richard Austin would advise the co-defendants and co-conspirators of the plans and activities of the governmental agencies charged with the responsibility of enforcing the laws of the United States, the State of Illinois, and the City of Chicago relating to the illicit traffic in narcotic drugs.

[fol. 52] 7. That it was further a part of said conspiracy that the defendants, Sheldon Teller, Miles Cooperman, and Richard Austin, would receive money from the said co-defendants and co-conspirators in return for protecting the illegal activities of the said co-defendants and co-conspirators from detection by the said governmental agencies.

8. That it was further a part of the said conspiracy that the said defendants and co-conspirators would misrepresent, conceal and hide and cause to be misrepresented, concealed and hidden the purposes of and the acts done in furtherance of the conspiracy.

9. That in furtherance of the said conspiracy and in pursuance of the objects thereof, the said defendants and co-conspirators performed the following overt acts:

OVERT ACTS

1. During the summer of 1955 defendant James White held a conversation with defendant Jeremiah Pullings.

2. During or about the months of January or February 1956 defendants, James White, Gladys Davis and Dolores Keeby, met with Lydia Shorten and Jesse Maroy in Chicago, Illinois.

3. During or about the month of February 1956 defendant Jeremiah Pullings held a conversation with Jesse Maroy.

4. During or about the month of March 1956 defendants, Sheldon Teller and Miles Cooperman, accepted the sum of approximately Six Hundred Dollars ($600.00) in lawful money of the United States from Otis Sears.

5. During or about the month of July 1956 defendants, Sheldon Teller and Miles Cooperman, held a conversation with Jesse Maroy in Chicago, Illinois.

[fol. 53] 6. During the summer of 1956 defendant, Sheldon Teller, placed a telephone call to Hudson 8-4348 in Chicago, Illinois.

7 During the summer of 1956 defendant, Miles Cooperman, held a conversation with defendant, Morris Roller, at or near 202 East 79th Street, Chicago, Illinois.

8. During or about January 1957 defendant, Morris Roller, held a conversation with Lydia Shorten in Chicago, Illinois.

9. On or about January 9, 10 and 11, 1958 the defendants, Jeremiah Pullings, Alice Gilmore, Morris Roller and Florine Whitlow Johnson, met and conversed with Victoria Marie Basemore and Narcotic Agent James S. Bailey at 9731 South Perry Avenue, Chicago, Illinois.

10. On or about January 11, 1958 the defendant, Florine Whitlow Johnson, delivered a quantity of heroin to Victoria Marie Basemore.

11. On or about February 9, 1958, defendant, Dolores Keeby, delivered a quantity of heroin to Maple Shorten.

12. On or about February 3, 1958, defendant, Alice Gilmore, accepted the sum of approximately Seven Hundred

Dollars ($700.00) in lawful money of the United States from James S. Bailey.

13. On or about February 5, 1958 defendant, Alice Gilmore, had a telephone conversation from Chicago, Illinoi., with Narcotic Agent James S. Bailey in Miami, Florida.

14. During or about February 1958 the defendants, Sheldon Teller and Miles Cooperman, delivered a quantity of cocaine to Otis Sears and defendant Simon Stallsworth.

15. On or about March 22, 1958 the defendants, Sheldon Teller and Miles Cooperman, met with John Paul Dispensa in Evergreen Park, Illinois.

[fol. 54] 16. During 1958 defendant, William Jones, paid the sum of approximately Five Hundred Dollars ($500.00) in lawful money of the United States to Moses Winston Mardis.

17. During 1958 defendant, Sheldon Teller, received a payment of approximately Five Hundred Dollars ($500.00) in lawful money of the United States, in Chicago, Illinois.

18. The defendant, Miles Cooperman, held a conversation with Otis Sears and the defendant, Armando Piemonte, during or about the month of May 1958.

19. During or about the early months of 1958 defendants, Sheldon Teller and Miles Cooperman, delivered to Otis Sears, heroin weighing approximately one-quarter kilogram at or about the intersection of 60th Street and Dorchester Avenue in Chicago, Illinois.

20. The defendant, Sheldon Teller, accepted the sum of about approximately Four Thousand Seven Hundred Dollars ($4,700.00) in lawful money of the United States from Otis Sears during or about the early months of 1958 in payment for the heroin delivered as hereinabove set forth as Overt Act No. 19.

[fol. 55] 21. During or about November 1958 defendants, Sheldon Teller and Richard E. Austin, paid the sum of approximately Eight Hundred Dollars ($800.00) in lawful money of the United States to Otis Sears.

All in violation of Title 21, United States Code, Section 174.

A True Bill:

William N. Bollinger, Foreman.

R. Timkin, United States Attorney. Max H. Goldschein, Special Attorney, Department of Justice.

[fol. 56] No. 59CR466

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA,

vs.

SHELDON R. TELLER, MILES J. COOPERMAN, RICHARD E. AUSTIN, JEREMIAH HOPE PULLINGS, alias Jerry Evans, ARMANDO PIEMONTE, SIMON H. STALLSWORTH, MORRIS WHEELER ROLLER, DOLORES KEEBY, alias Dee Dee, JAMES A. WHITE, FLORINE WHITLOW JOHNSON, alias Jayrece Emery, ALICE M. GILMORE, alias Mona Evans, GLADYS DAVIS, alias Gladys White, WILLIAM L. JONES.

INDICTMENT

Vio: Section 174, Title 21, United States Code.

(Conspiracy to violate the narcotic laws of the United States.)

A true bill,

William N. Bollinger, Foreman.

Filed in open court this 2nd day of Sept., A. D. 1959.

Roy H. Johnson, Clerk.
DB

Bail, $.....

[fol. 57] IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12819 September Term, 1959—January Session, 1960

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

ARMANDO PIEMONTE, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

DECISION—February 29, 1960

Before: Hastings, Chief Judge, and Duffy and Castle, Circuit Judges.

DUFFY, Circuit Judge:

This is an appeal from an order of the District Court adjudging appellant guilty of contempt of court for failing to answer a number of questions propounded by a Federal Grand Jury.

On August 10, 1959, appellant appeared as a witness before a Federal Grand Jury sitting in Chicago, Illinois, pursuant to a writ of *habeas corpus ad testificandum* which was served on the warden of the Federal Penitentiary at Leavenworth, Kansas. Appellant answered his name and admitted he was imprisoned in the Leavenworth penitentiary under a sentence of six years for the possession and sale of heroin. When asked where he obtained the heroin which he was convicted of having possessed and sold, he declined to answer on the ground he might incriminate himself. Thereafter, he declined on the same ground to answer other questions such as whether he [fol. 58] knew certain named persons, whether he had obtained heroin from such named persons, or sold heroin or marijuana to them.

On August 13, 1959, the Grand Jury requested a ruling by the Court on appellant's claim of privilege. Judge Campbell ruled that the privilege was well taken except as to those questions asked on August 10 relating to the source of the particular narcotic drugs upon which his prior conviction rested. Immediately thereafter, the Court received the Government's petition for an order directing appellant to answer questions pursuant to 18 U.S.C. § 1406, the immunity provisions of the Narcotics Control Act of 1956.[1] The Court granted the application and stated to plaintiff: "It, therefore, is no longer necessary for you to invoke the protection of the Fifth Amendment to protect yourself from incrimination or subsequent prosecution, because pursuant to the provisions of the Narcotic Control Act, I now grant you immunity from such prosecution and

---

[1] Pertinent are the following provisions of Title 18 U.S.C. § 1406: "Immunity of Witnesses. Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

1) any provision of part I or part II of Subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

2) subsection (c), (h), or (i) of Section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), or

3) the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a),

is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. • • •"

direct you to answer the questions propounded to you by the Grand Jury."

The Court directed appellant's appearance before the Grand Jury be deferred until the following day so that he might consult counsel in the interim. The Court ex- [fol. 59] plained to appellant that his failure to abide by the order of the Court could result in his punishment for contempt. The record shows that appellant had consulted counsel shortly prior to his first appearance before the Grand Jury.

The following day, appellant again appeared before the Grand Jury. He was asked the identical questions asked him on the previous day as well as ten or fifteen additional ones. Appellant refused to answer any of the questions, relying upon his privilege against self-incrimination.

Appellant's counsel argues that in its verbal order, the District Court told Piemonte that it was granting immunity, but counsel argues the Court had no such power. Counsel contends the written order which followed made no mention of immunity, stating only the order was made in accordance with § 1406, Title 28, U.S.C. He also urges Piemonte was much confused, and that the meaning of the alleged conflicting orders was hopelessly blurred.

The record clearly demonstrates that Piemonte understood what questions he was ordered to answer. When, for a second time, he refused to answer, Judge Campbell issued an order to show cause why Piemonte should not be held in wilful and deliberate contempt. On direct examination by his own counsel, the following exchange took place:

> "Q. Now, will you tell his Honor, Judge Campbell, the basis for your refusal to answer questions propounded to you before the Federal Grand Jury on August 10th and August 14, 1959?
>
> "A. Well, I am doing time in the penitentiary. I fear for my life. I fear for the life of my wife, my two stepchildren, and my family. I can't do something like that. I want to live, too."

During the argument, appellant's counsel said: "• • • His real basis for his disobedience is his fear that is

embedded." The District Court interjected, "It may well be his real reason, but that is not a legal reason for failure to obey my order." It would seem that the District Court was on solid ground in holding that fear of underworld retaliation is no reason to excuse the appellant from his obligation to testify under a complete grant of immunity.

[fol. 60] Judge Campbell was very patient with the witness and time after time gave him opportunity to say that he would testify before the Grand Jury. However, Piemonte steadfastly refused.

There is no indication that there was any confusion in Piemonte's mind. He understood the alternative, and deliberately chose to defy the Court. He stated: "Your Honor, I am not trying to defy you or get smart, or anything like that. I just can't." All these exchanges hereinbefore quoted took place in open court in the presence of appellant's attorney.

Strictly speaking, the criticism may be well-founded that the Court itself could not grant the immunity. However, the statute granted the immunity and the manner in which Judge Campbell expressed that immunity was not in any way confusing to Piemonte.

The judgment of the District Court holding and finding that Armando Piemonte was guilty of contempt of court must be and is hereby

Affirmed.

[fol. 61]

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago 10, Illinois

Before: Hon. John S. Hastings, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Latham Castle, Circuit Judge.

In Re Certain Grand Jury Proceedings, in re Armando Piemonte.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 12819

ARMANDO PIEMONTE, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

JUDGMENT—February 29, 1960

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from, entered therein on August 18, 1959, holding and finding that Armando Piemonte was guilty of contempt of court be, and the same is hereby, Affirmed, in accordance with the opinion of this Court filed this day.

[fol. 62]

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—May 3, 1960

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

[fol. 63] Clerk's Certificate to Foregoing Transcript (omitted in printing).

[fol. 64]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 10, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 122

In Re Certain Grand Jury Proceedings,
ARMANDO PIEMONTE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MELVIN B. LEWIS
FRANK W. OLIVER
77 West Washington Street
Chicago 2, Illinois
Attorneys for Petitioner.

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL.

INDEX

LIST OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

In Re Certain Grand Jury Proceedings,
ARMANDO PIEMONTE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Armando Piemonte, respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit in the above entitled cause.

Opinion of the Court Below

The order of the United States District Court for the Northern District of Illinois, Eastern Division, sentencing petitioner for contempt of court, was entered on August 18, 1959. See Appendix, page 48.

The as yet unreported opinion of the United States Court of Appeals for the Seventh Circuit, affirming the order in the District Court, was filed on February 29, 1960. It appears in full in an Appendix hereto.

Jurisdiction

The judgment of the Court of Appeals sought to be reviewed was entered February 29, 1960. Petition for Rehearing was denied on May 3, 1960. This Petition for Certiorari is filed within thirty days of the denial of the Petition for Rehearing.

This Court's jurisdiction is invoked under Title 28, U. S. Code, Section 1254(1) and Rule 19(b) of the Rules of this Court.

QUESTIONS PRESENTED FOR REVIEW

I. Whether a prisoner in a federal penitentiary can properly be taken before a Grand Jury, granted "immunity" to testify as to narcotics transactions, held in contempt of court following his refusal to answer and given a substantial sentence, where the procedure by which he is processed is mechanical; where court and prosecutor openly differ as to his constitutional rights and as to what is required of him; where he is not represented by counsel at crucial stages in the proceedings, and where he is thereafter indicted by the same Grand Jury?

II. Whether a petitioner can be held in contempt of a void verbal order which he fails to obey, or a written order which is never served upon him or otherwise brought to his attention?

III. Whether petitioner may be held in contempt of court for failure to abide a written order purporting to confer immunity, which order was defective in form, and in substance in that as to its substance, it deprived petitioner of his constitutional right not to incriminate himself by failing to make the immunity granted co-extensive with his constitutional privilege?

IV. Whether petitioner could be held in contempt of court without the court's having made a determination that he properly invoked his privilege not to incriminate himself as to certain questions asked of him, and where he was not granted immunity as to those questions?

STATUTES INVOLVED

Petitioner was adjudged guilty of contempt of court under the provisions of Section 401(3), Title 18, U. S. Code, as affected by Section 1406, Title 18, U. S. Code, the pertinent provisions of which statutes are set out in full in the Appendix hereto.

CONCISE STATEMENT OF CASE

The District Court record appears substantially in its entirety in petitioner's Appendix. Petitioner's subsequent indictment for narcotic offenses became a part of the record in the Court of Appeals subsequent to the filing of the Appendix, has been certified by the Clerk of the Court of Appeals and is stapled to the copies of the Appendix filed in this Court.

The Proceedings Below

On August 10, 1959, Your Petitioner was called as a witness by a Grand Jury convened in the Northern District of Illinois (App. 4). He stated his name, admitted he was then imprisoned in Leavenworth Penitentiary for the sale and possession of heroin (App. 4-5). Petitioner declined to answer where he obtained that heroin, and whether he knew certain named persons, had obtained heroin from or sold heroin or marijuana to them, and the like (App. 4-10).

With the approval of the Attorney General, thereupon the prosecutor petitioned the District Court (App. 10-13) to compel petitioner's testimony on the ground that the Grand Jury was investigating the narcotic traffic, involving violations of: Parts 1 and 2 of Subchapter A, Chapter 39, Internal Revenue Code of 1954; of Section 174, Title 21, United States Code; and Section 184(a), Title 21, United States Code. The prosecutor's petition stated that the testimony of the petitioner was needed in the public interest. The District Court then found orally that Your Petitioner's privilege against possible self-incrimination was not properly asserted as to questions relating to narcotic offenses of which petitioner had already been found guilty, but would apply to the other questions put to him (App. 17-18). The District Judge then addressed Your Petitioner in the following terms:

> "The Court: . . . I find that you are a necessary and material witness to the Grand Jury investigation now being conducted by the . . . Grand Jury . . . And in accordance with the provisions of the Narcotic Control Act, this court now grants you immunity from prosecution which might arise from any answers that you give to this Grand Jury concerning the matter of their investigation.

"It, therefore, is no longer necessary for you to invoke the protection of the Fifth Amendment to protect yourself from incrimination or subsequent prosecution, because pursuant to the provisions of the Narcotic Control Act, I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury.

"Do you understand the order of the court?"

"Mr. Piemonte [petitioner]: Yes, sir, your Honor." (App. 18-19).

A written order was also entered (App. 14-15). That order stated that the United States Attorney, with the approval of the Attorney General, had applied to the District Court, said application reciting that the Grand Jury was investigating violations of Parts 1 and 2 of Subchapter A, Chapter 39, I. R. C. 1954, the penalty for which is provided in Subsections (a) and (b) of Section 7237, Title 26, U. S. Code, and violations of Section 174 and 184(a), Title 21, U. S. Code; that petitioner's testimony was needed; that the application was made in good faith; and that petitioner had appeared before the Grand Jury and claimed his privilege against self-incrimination instead of answering questions. The order contained a finding that petitioner had properly asserted his privilege. In its decretal portion the written order provided only that petitioner, if called before the Grand Jury relative to this inquiry, should not be excused from testifying on the ground of possible self-incrimination. The order further recited that it was made in accordance with Section 1406, Title 18, U. S. Code.

On being recalled by the Grand Jury, the prosecutor advised petitioner ". . . the Judge . . . granted you immunity and ordered you to answer questions propounded to you before this Grand Jury concerning narcotics" (App. 21).

Petitioner again declined to answer where he got the heroin (App. 22) and declined to answer a series of questions substantially the same as those asked in his previous appearance before the Grand Jury (App. 24-25).

Petitioner further declined, for reasons of possible self-incrimination, to answer a series of questions not previously put to him, relating to the identification of and appellant's narcotics dealings with, persons not referred to in his first appearance before the Grand Jury (App. 26).

On the government's motion (App. 28-29) the District Judge ordered petitioner to show cause why he should not be held in contempt of court for a refusal to answer the questions put to him (App. 32-33). Following a hearing before the court (App. 34-36) petitioner was adjudged guilty of contempt and sentenced to prison for eighteen months, the sentence to run consecutive to the sentence then being served by petitioner in the United States Penitentiary (App. 48).

REASONS FOR ALLOWANCE OF THE WRIT

I.

The proceedings in the District Court cannot sustain a contempt finding because in the course of those proceedings both prosecutor and District Judge failed to clarify the requirements placed upon petitioner to answer the Grand Jury's questions. Instead, both permitted the proceedings to move mechanically, without due regard for petitioner's right not to incriminate himself, and without due regard to his situation as a convicted man.

When he appeared before the grand jury, petitioner was a prisoner of the Federal government. He was, and is today, confined in Leavenworth Penitentiary in the course of serving out a six-year sentence. His conviction was for the possession and sale of narcotic drugs (App. 4).

In the course of his initial interrogation before the Grand Jury on August 10, 1959, Mr. Max Goldschein, Special Agent of the Department of Justice, questioned petitioner regarding the source of the heroin for whose possession and sale he had been convicted, and as to whether or not he had dealt in narcotic drugs or marijuana with a number of named persons (App. 6-10). Petitioner admitted his conviction but declined to answer further on grounds of possible self-incrimination. Agent Goldschein informed petitioner that he could not invoke his privilege as to things related to offenses of which he stood convicted (App. 5).

On August 13, 1959, Agent Goldschein moved the District Court to require the petitioner to answer his ques-

tions, under the authority of Section 1406, Title 18, United States Code (App. 10-13). A hearing ensued in the course of which the District Judge observed that the privilege against self-incrimination could not be invoked as to matters related to offenses for which petitioner had been convicted (App. 17). Agent Goldschein disagreed with the court (App. 16). The court asserted that the balance of the testimony sought would tend to incriminate petitioner (App. 17).

The court then told petitioner, that he, the Judge, granted petitioner immunity, and directed him ". . . to answer the questions propounded to you by the Grand Jury" (App. 19). Petitioner stated he understood the order.

As argued hereafter, at Point II, the trial judge had no authority to enter such order.

Thereafter, on the same day, the District Judge entered a written order finding petitioner properly invoked his privilege. The order, containing no ostensive grant of immunity, ordered petitioner to return to the Grand Jury and answer its questions (App. 14-16).

We argue, at Points II and III, that petitioner did not have notice of the written order and that the written order was, in any event, defective.

Petitioner was recalled before the Grand Jury on August 14, 1959 (App. 21). He was advised by agent Goldschein:

> ". . . . the Judge . . . granted you immunity and ordered you to answer questions propounded to you before this Grand Jury *concerning narcotics*". (App. 21, emphasis supplied).

Petitioner was then asked concerning the source of the heroin for whose sale and possession he had been sentenced.

(App. 22); about a sale to one Geraci of a quantity of marijuana (App. 22); a number of questions which he had previously been asked; and new questions relating to the identity and criminal activities of persons not previously named (App. 23-26).

Petitioner again declined to testify other than to admit that he was then under sentence for commission of previous narcotic offenses.

Apparently petitioner had "talked" to a lawyer prior to his first appearance, but that he lacked effective assistance of counsel until after the entry of the show cause order is apparent from the colloquy between Mr. Piragine, an attorney who subsequently appeared for him, and the District Judge. Mr. Piragine noted that previous to August 14, petitioner did not have the aid or assistance of counsel (App. 35). To which the court replied:

"The Court: That is right." (App. 35)

It thus appears that petitioner found himself without proper assistance in a situation, the various factors of which he was necessarily unable to evaluate, whether or not he thought he could evaluate them. The prosecutor, a man learned in the law, and the District Judge, likewise a man learned in the law, could not get together on the question as to whether or not answers to questions pertaining to petitioner's previous conviction might tend to incriminate him. Mr. Goldschein told petitioner at the time of his first appearance before the Grand Jury that such questions could not tend to incriminate (App. 5). Mr. Goldschein, at the time of applying for an order on petitioner to answer represented to the District Judge that

the petitioner had properly invoked his privilege as to those matters (App. 16). Petitioner could only have concluded that Mr. Goldschein was mistaken, either before the grand jury or the court as to his right to invoke his privilege, or, alternatively had doubt from day to day as to what the rights of a grand jury witness might be. The court, on the other hand, disagreed with Mr. Goldschein's view as expressed in court, advising petitioner that he could not properly invoke his privilege concerning matters related to the subject of his conviction (App. 17). Subsequently the court entered a written order to the effect that petitioner's privilege was properly invoked as to the questions propounded to him and that they would tend to incriminate him (App. 14).

Thus petitioner found himself in a situation where persons who purported to know something of the law of the matter not only could not agree with one another, but could not, from time to time, even manage to agree with themselves. We suggest that where the powers of government were themselves openly in doubt as to the legal effect of various states of fact or fancy, it placed an unfair burden upon petitioner to require him to choose a proper course of conduct.

Further, the District Judge told the petitioner that he granted him immunity from prosecution arising from apparently *any* answers given to the Grand Jury concerning the matter of their investigation (App. 18-19) only to be told by Mr. Goldschein that the Judge had granted him immunity and ordered him to ". . . answer questions . . . . *concerning narcotics*" (App. 21, emphasis supplied).

Assuming that petitioner had seen the written order (App. 14-15) he would have found that he need answer only ". . . relative to the aforementioned inquiry of said Grand Jury . . ." (App. 15), leaving to petitioner the burden of

determining what constituted the scope of the inquiry of the Grand Jury.

Mr. Goldschein having restricted petitioner's immunity to questions relating to narcotics, then propounded questions referring to narcotics, others plainly unrelated to narcotics, and still others which may or may not have had to do with narcotics. Section 176(a), Title 21, United States Code, for example, has to do with dealing in marijuana which is imported contrary to law. Clearly that lies outside the ambit of the written order, the verbal order, and Mr. Goldschein's admonition. Yet when Mr. Goldschein returned to the Grand Jury, he inquired about a sale of marijuana to one Geraci (App. 22). Had petitioner answered the question affirmatively, he would properly have been subject to prosecution for sale of marijuana. Nevertheless, petitioner was sentenced to serve an additional period of eighteen months in the penitentiary, the basis for his sentence having been in part, at least, his refusal to answer that question.

Petitioner was also asked as to his acquaintance with named individuals. While those individuals may have engaged in narcotics traffic, it does not appear that they were not also engaged, with petitioner, in the commission of other crimes. If so, the admonition that he had immunity only as to matters relating to narcotics could only have had the effect of instilling in petitioner the belief that as to other matters he lacked immunity.

For obvious reasons, an adjudication of contempt can be predicated only upon a foundation which is clear, incisive, and leaves no doubt as to what is required to be done. *National Labor Relations Board* v. *Deena Artware*, 6 Cir., 261 F. 2d 503, 509 (1958); *Traub* v. *United States*, D. C. Cir., 232 F. 2d 43, 48-49 (1956).

We ask this Court to contrast the procedure followed below to that described in *Corona* v. *United States*, 6 Cir., 250 F. 2d 578-579 (1958) where Mr. Goldschein was commended by the Circuit Court for having proceeded properly, commenting that the appellant there was provided with counsel at an appropriate time and was sufficiently apprised concerning what questions to answer in order to comply with the court's order.

Here, petitioner had no counsel at the crucial stage of the proceedings, namely, on August 13, when immunity was supposedly granted to him (App. 15-20). This Court will also observe that in both the verbal order (App. 18-19) and in the written order (App. 14-15) the court fails to specify what questions were to be answered. Rather the burden was thrown upon petitioner to make that determination.

Taken altogether, petitioner could only have been convinced that he was enmeshed in an extremely treacherous situation, that he proceeded at the hazard of being indicted, tried, and convicted of offenses as to which immunity had not been granted, and that he had best seek refuge in what he naively believed to be a viable constitutional provision.

In its opinion (Appendix A, *infra*) the Court of Appeals stressed the fact that at the contempt hearing petitioner's announced motive for his refusal to testify was his fear of underworld retaliation. We do not find fault with the Court of Appeals' observation that such fears provided no basis for that refusal. But that opinion overlooks the fact that whatever motive causes a man to invoke his constitutional privilege is irrelevant so long as he properly invokes it.

That petitioner properly invoked his constitutional privilege to refuse to incriminate himself is evidenced by the fact that the very same grand jury which questioned him, thereafter indicted him for a narcotic conspiracy. Special Agent Goldschein's name is affixed to that indictment (see additional record, Certified Appendix). Thus, there can be no doubt but that petitioner's fear of self-incrimination was genuine.

We can cite no authority to the effect that the government should not reach into a penitentiary for a then unoffending victim, subject him to an inquisition, manipulate empty forms of justice, tack additional years to his sentence, and throw him back to his cell.

We simply think it disgraceful. That is the totality of the "authority" we offer.

Petitioner here obviously cannot pretend to be an average, decent citizen. He is a convicted purveyor of drugs. But the procedures followed in the District Court, sanctified by the Court of Appeals, and now brought before your Honors for supervisory consideration will, if the Court of Appeals opinion be permitted to stand, represent a kind of nadir of criminal law enforcement.

No longer need the policeman drearily await an offense. He may simply select a man from the penitentiary (or elsewhere) who can be counted upon not to "cooperate" (as our policeman puts it). If law enforcement is to be reduced to a hatful of rags, a more effective means of accomplishing that result is hard to imagine.

Had the government made an adequate showing of necessity; had the proceedings been less in the nature of the shuffling of empty forms; had it been made to appear that petitioner was in a position substantially to assist

the Grand Jury inquiry, it is then conceivable that these proceedings might have been justified. Instead, petitioner was a lump of raw material, fed through Agent Goldschein's grist grinder, purveyed to the Judicial Machine, processed there to the tune of one and one half years, and returned to its dungeon cell for storage.

II.

The verbal order of court requiring petitioner's testimony was void, so that petitioner could not properly be held in contempt for refusing to comply with that order. The record is absolutely barren of evidence to the effect that the Trial Judge's written order, which may or may not have been a valid order, was brought to the notice of petitioner, so that petitioner could not be in contempt for failure to comply with that order.

On August 13, 1959 the District Judge, in petitioner's presence in open court, stated in the following language that he, the Judge, was conferring immunity from prosecution: ". . . this court now grants you immunity from prosecution . . ." (App. 18) and ". . . I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury" (App. 19).

The court's order was clearly void. The court lacked power himself to grant immunity from prosecution. *Isaacs v. United States*, 8 Cir., 256 F. 2d 654, 661 (1958) held that an attempt by a trial judge to grant immunity in exchange for testimony constituted an invasion of executive and legislative powers. See also *Ullmann v. United States*, 350 U. S. 422, 434 (1956). The court's authority was limited to making certain findings, *i.e.*, whether the statutory requirements were complied with by the Grand Jury, the

United States' Attorney, and the Attorney General. *Ullmann v. United States, supra*, 434; *Coroni v. United States*, 6 Cir., 250 F. 2d 578; 579 (1958).

The Court of Appeals for the Seventh Circuit, in reviewing this case seems to concede the invalidity of the verbal order:

> "Strictly speaking, the criticism may be well founded that the court itself could not grant immunity."

(See Opinion, Appendix A, this Petition)

The opinion of the Court of Appeals goes on to explain that the situation was really alright, because the trial judge had merely adopted his own way of expressing to petitioner the immunity granted by the statute. But the defect in the situation derives from the facts that: (a) the judge's verbal order was nonetheless void because the judge had no authority to grant immunity, and, (b) The written order which was entered (which we contend elsewhere was itself defective) was never shown to have been brought to petitioner's attention.

If the verbal order was void, petitioner could properly fail to comply with it. If petitioner did not have actual notice of the written order, assuming it to be valid, his failure to comply with it could not form a basis for contempt. Nothing in the record suggests that petitioner had an opportunity to examine it prior to his refusal to testify at his second Grand Jury appearance. For aught it appears, the written order was entered *ex parte*. The record raises doubts as to whether or not the written order was even available for examination prior to petitioner's second appearance before the Grand Jury. The written order does not have the stamp of the clerk of court thereon, from which it might be determined when the order was filed. If the order was simply signed on the date it bears,

was never shown or read to petitioner, and was not even available in the office of the clerk of court for inspection by petitioner or someone acting for him, the order would, in petitioner's eyes, simply not exist. Such is the state of the record that it not only fails to show beyond a reasonable doubt that petitioner had notice of the written order, but it appears affirmatively that petitioner could not have had notice of that order. Thus the only order of which petitioner had notice was the court's void verbal order.

But one cannot be punished for contempt of a court order unless he has actual notice of that order. Further, in the sort of case before this Court, the government has the burden of proving that the supposed contemnor had such actual knowledge. Thus in *United States* v. *Hall*, 2 Cir., 198 F. 2d 726, 729 (1952) the court observed that under 18 U. S. C., Section 401(3):

> "... there must be proof of the contemnor's knowledge of the order . . . and the burden on the government is a high one."

Nor is constructive notice of the order entered sufficient. There must be actual knowledge of the entry of the order, and the government must prove that knowledge by substantial evidence, *United States* v. *Thompson*, 2 Cir., 261 F. 2d 809, 810 (1958).

In *Green* v. *United States*, 356 U. S. 165 (1952), this Court acknowledged the existence of the rule requiring actual knowledge, holding (pp. 178-179) that the District Judge was there justified in finding that the evidence established, beyond a reasonable doubt, that the contemnors there knew of the order which formed the basis of the citation. One Justice, dissenting on a question of fact, stated

the rule which the majority assumed to be the correct rule, in the following language:

> "The indispensable element of that offense [violations of 18 U. S. C., Section 401 (3)] is that the petitioners, who were not served with the order, in some other way obtained actual knowledge of its existence and command." *Green v. United States*, 356 U.S. 165, 221 (1958)

In the matter before your Honors no showing of any kind was made that the petitioner was either served with or had actual knowledge of the order for whose violation he was sentenced. He only had knowledge of an order which was void and which he had every right not to obey.

III.

The court's written order requiring petitioner's testimony was defective.

The written order requiring petitioner to testify (App. 14-15) recited an application had been made to compel the testimony. The application averred as facts, to bring it within the ambit of the immunity statute, Section 1406, Title 18, United States Code, (1) that the grand jury was investigating certain federal narcotics law violations; (2) that petitioner's testimony was in the public interest; (3) that the United States' Attorney and Attorney General had made application for an order directing the witness to testify, under the provision of the immunity statute.

While the court lacked authority itself to grant immunity, it had authority to make findings which would energize the immunity statute. *Ullmann v. United States*, 350 U.S. 422, 434 (1956); *Corona v. United States*, 6 Cir., 250 F. 2d 578, 579 (1958).

Corona enumerated the *necessary* findings as the three listed above. But here, the written order did not make

those findings. The written order simply recited that an application had been made, which application, as recited in the order, contained the necessary elements. But the court did not make any findings that the matters set forth in the application were in fact true. The court only stated in its order that the application had in fact been made.

The District Judge did make a finding but the only thing that the judge found in his written order, was that appellant had properly asserted his constitutional privilege not to answer questions. Had the court wished to adopt the allegations of the application as part of its findings, it could have done so very easily, merely by asserting that it found that matters recited therein were true. This the court did not do. What the court did do was to find that petitioner would incriminate himself if he were to answer the questions which had been put to him—and then ordered him to answer.

The written order was further defective in that it purported to grant petitioner immunity only as to certain of the subject matter of his testimony. The statute, however, which supposedly immunizes so that a witness' security thus granted is co-extensive with his protection under the constitutional amendment, provides for immunity broader than that allowed by the District Judge. The statute provides for immunity as to any ". . . transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify . . ." (18 U. S. C., Section 1406).

Here, the court severely limited the scope of the immunity proposed under the statute by stating in its order that petitioner should produce evidence ". . . relative to the aforementioned inquiry of said Grand Jury . . ." and that he should not be excused from testifying ". . . on the

ground that the testimony or evidence required of him . . ." might tend to incriminate him (App. 15). Thus by its terms the order contained two elements: (1) that petitioner should testify relative to "the aforementioned inquiry", and, (2) that petitioner should not be excused on grounds of self-incrimination from testifying to those matters "required of him".

The matters "required of him" were, of course, the matters "relative to the aforementioned inquiry". Thus immunity was not to apply to all testimony adduced. Only to part of it. The part relative to the aforementioned inquiry. It was left for petitioner to determine which questions related to the "aforementioned inquiry" and which did not. If he answered questions which were not "relative" to the inquiry, they could not properly be "required of him," so that as to those, he was without the scope of the supposed immunity.

The "aforementioned inquiry," according to the court's order related to violations of Parts 1 and 2 of Subchapter A of Chapter 39, Internal Revenue Code of 1954, whose penalty is provided in 26 U. S. C., Section 7237, and for violations of Sections 174 and 184(a) of Title 21, U. S. Code. Hence, if petitioner's answers revealed violations of statutes other than those enumerated, his answers would not have been compelled by the court's order and as to such matters petitioner would have been outside the scope of the supposed immunity. Similarly, his refusal to answer questions relating to other violations could not, since he had not been ordered to answer such questions, constitute a contemptuous refusal to obey the written order of the court.

In point of fact, questions were put to petitioner which plainly lay outside the immunity. Thus, he was asked about a marijuana sale (App. 22). But Section 176(a) Title 21, U. S. Code, severely penalizing marijuana transactions, was not one of the matters as to which he was "required" to answer questions. It is neither enumerated in the immunity statute nor is its penalty provided in 26 U. S. C., Section 7237, nor did the District Judge suggest that as to such transaction petitioner should be granted immunity.

The court in *Corona* v. *United States*, 6 Cir., 250 F. 2d 578-579 (1958) attached some importance to the fact that appellants were there sufficiently advised as to *just what questions* they were to answer in order to comply with the court's order. Such was not the case here. In addition to the burden thrown upon petitioner to decide what was or was not within the scope of the Grand Jury inquiry (assuming he could occultly have known of the written order by some means undisclosed by the record) he was faced with a verbal order which advised him in completely general terms to answer the questions "propounded to you by the Grand Jury" (App. 19) without specifying the exact questions to be answered.

We urge that where a Constitutional right is to be displaced, the person otherwise entitled to exercise that right must be placed in the same position of security through the substitute that he would have enjoyed had he not been deprived of his privilege.

IV.

Petitioner was adjudged guilty of contempt of court without the court's having made any determination that he properly invoked his privilege as to certain questions asked of him.

The statute is specific so far as qualification for immunity is concerned. Section 1406, Title 18, U. S. Code states in pertinent part that no witness:

> " . . . shall be prosecuted on account of any transaction, matter, or thing concerning which he is compelled, *after having claimed his privilege against self-incrimination* to testify. . . ." (Emphasis supplied).

At his second Grand Jury appearance, appellant was asked to answer questions previously put to him, but was also asked to answer questions not previously put to him and as to which he had not asserted his privilege. The statute appears to require the invocation of the constitutional privilege as to each transaction, matter, or thing to which immunity is to be extended. For it plainly states that witnesses shall not be prosecuted on account of matters to which they are compelled to testify *after* having claimed the privilege as to such matters.

Under the statute, the court would have no power to make findings which would energize the immunity statute, as to matters concerning which a witness had not invoked his privilege not to incriminate himself. Thus, as to such matters, no immunity could attach. On being asked new questions, and upon invoking his privilege not to answer them, petitioner was not returned to the District Judge for a further attempted grant of immunity. Yet he was sentenced to contempt for refusal to answer those questions just as surely as he was for his refusal to answer questions put to him at his first Grand Jury appearance.

That the additional questions were in fact incriminating is evidenced by the fact that the very same Grand Jury before which petitioner had appeared, indicted petitioner for narcotic conspiracies said to be in operation from 1956 until a date subsequent to petitioner's appearance before the Grand Jury. One of his co-defendants, one Jeremiah Pullings, was a man about whom petitioner was asked for the first time at his second Grand Jury appearance (App. 26). Petitioner invoked his constitutional privilege to questions about Pullings at his first opportunity, namely, at his second Grand Jury appearance. We caused to be made a part of the record in the Court of Appeals the indictment in question. It is stapled to the back of each appendix (yellow cover) supplied to this Court and is certified to the Court as part of the record.

In the case before your Honors, the District Judge sought to grant petitioner immunity as to answers to certain questions, but afforded petitioner no opportunity to qualify for immunity as to other questions. Petitioner was asked a large number of questions in both Grand Jury appearances. A burden was thrown upon him to recall exactly which questions had previously been put, as to which he had invoked his privilege. Petitioner's failure to remember the first batch of questions over the intervening four days between testimonial sessions would have placed petitioner in a desperate situation, namely, that of making possibly self-incriminatory answers, not covered by a supposed grant of immunity.

In the same connection this Court should observe that neither petitioner nor the attorney who ultimately appeared for him were provided with a transcript of the testimony of his first Grand Jury appearance. The second Grand Jury appearance occurred on August 14, 1959 at 10:00 a.m. (App. 21). A hearing before the District Judge took place on that date at 2:00 p.m. (App. 28). In that hearing, the Judge referred to a previous order to im-

pound the Grand Jury transcript of August 10, and stated that the impounding order should be lifted for petitioner's counsel (App. 30).

Thus a feat of reasoning was thrust upon petitioner as to just what was required by the order of court, and a feat of memory was thrust upon him to recall accurately just what questions had been put to him in his first Grand Jury appearance. The intellectual demands would have taxed the average lawyer. Petitioner's capacity to deal with this complicated situation is revealed, perhaps, by his observation " . . . I ain't answering no questions" (App. 6).

CONCLUSION.

For the foregoing reasons, we respectfully urge that this petition for certiorari should be granted.

Respectfully submitted,

MELVIN B. LEWIS AND
FRANK W. OLIVER,
Attorneys for Petitioner

State of Illinois }
County of Cook } ss.

Frank W. Oliver, being first duly sworn on oath deposes and says that he is one of the attorneys for Petitioner herein; that he served the foregoing Petition for Certiorari by mailing three copies thereof to the Solicitor General of the United States and three copies thereof to the United States Attorney, Chicago, Illinois.

.....

Subscribed and sworn
to before me this
st day of June, 1960.

.....

Notary Public

APPENDIX A.

OPINION OF THE COURT BELOW

February 29, 1960

Before HASTINGS, *Chief Judge*, and DUFFY and CASTLE, *Circuit Judges*.

DUFFY, *Circuit Judge*. This is an appeal from an order of the District Court adjudging appellant guilty of contempt of court for failing to answer a number of questions propounded by a Federal Grand Jury.

On August 10, 1939, appellant appeared as a witness before a Federal Grand Jury sitting in Chicago, Illinois, pursuant to a writ of *habeas corpus ad testificandum* which was served on the warden of the Federal Penitentiary at Leavenworth, Kansas. Appellant answered his name and admitted he was imprisoned in the Leavenworth penitentiary under a sentence of six years for the possession and sale of heroin. When asked where he obtained the heroin which he was convicted of having possessed and sold, he declined to answer on the ground he might incriminate himself. Thereafter, he declined on the same ground to answer other questions such as whether he knew certain named persons, whether he had obtained heroin from such named persons, or sold heroin or marijuana to them.

On August 13, 1959, the Grand Jury requested a ruling by the Court on appellant's claim of privilege. Judge Campbell ruled that the privilege was well taken except as to those questions asked on August 10 relating to the source of the particular narcotic drugs upon which his

prior conviction rested. Immediately thereafter, the Court received the Government's petition for an order directing appellant to answer questions pursuant to 18 U.S.C. § 1406, the immunity provisions of the Narcotics Control Act of 1956.[1] The Court granted the application and stated to plaintiff: "It, therefore, is no longer necessary for you to invoke the protection of the Fifth Amendment to protect yourself from incrimination or subsequent prosecution, because pursuant to the provisions of the Narcotic Control Act, I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury."

The Court directed appellant's appearance before the Grand Jury be deferred until the following day so that he might consult counsel in the interim. The Court explained to appellant that his failure to abide by the order of the Court could result in his punishment for contempt.

---

[1] Pertinent are the following provisions of Title 18 U.S.C. § 1406: "Immunity of Witnesses. Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

1) any provision of part I or part II of Subchapter A of Chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

2) subsection (c), (h), or (i) of Section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), or

3) the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a),

is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. * * *"

The record shows that appellant had consulted counsel shortly prior to his first appearance before the Grand Jury.

The following day, appellant again appeared before the Grand Jury. He was asked the identical questions asked him on the previous day as well as ten or fifteen additional ones. Appellant refused to answer any of the questions, relying upon his privilege against self-incrimination.

Appellant's counsel argues that in its verbal order, the District Court told Piemonte that it was granting immunity, but counsel argues the Court had no such power. Counsel contends the written order which followed made no mention of immunity, stating only the order was made in accordance with § 1406, Title 28, U.S.C. He also urges Piemonte was much confused, and that the meaning of the alleged conflicting orders was hopelessly blurred.

The record clearly demonstrates that Piemonte understood what questions he was ordered to answer. When, for a second time, he refused to answer, Judge Campbell issued an order to show cause why Piemonte should not be held in wilful and deliberate contempt. On direct examination by his own counsel, the following exchange took place:

> "Q. Now, will you tell his Honor, Judge Campbell, the basis for your refusal to answer questions propounded to you before the Federal Grand Jury on August 10th and August 14, 1959?
>
> "A. Well, I am doing time in the penitentiary. I fear for my life. I fear for the life of my wife, my two stepchildren, and my family. I can't do something like that. I want to live, too."

During the argument, appellant's counsel said: " . . . his real basis for his disobedience is his fear that is imbedded." The District Court interjected, "It may well

be his real reason, but that is not a legal reason for failure to obey my order." It would seem that the District Court was on solid ground in holding that fear of underworld retaliation is no reason to excuse the appellant from his obligation to testify under a complete grant of immunity.

Judge Campbell was very patient with the witness and time after time gave him opportunity to say that he would testify before the Grand Jury. However, Piemonte steadfastly refused.

There is no indication that there was any confusion in Piemonte's mind. He understood the alternative, and deliberately chose to defy the Court. He stated: "Your Honor, I am not trying to defy you or get smart, or anything like that. I just can't." All these exchanges here inbefore quoted took place in open court in the presence of appellant's attorney.

Strictly speaking, the criticism may be well-founded that the Court itself could not grant the immunity. However, the statute granted the immunity and the manner in which Judge Campbell expressed that immunity was not in any way confusing to Piemonte.

The judgment of the District Court holding and finding that Armando Piemonte was guilty of contempt of court must be and is hereby

AFFIRMED.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B.

STATUTES INVOLVED

18 U.S.C., § 401. Power of Court.

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command. June 25, 1948, c. 645, 62 Stat. 701.

18 U.S.C., § 1406. Immunity of Witnesses.

Whenever in the judgment of a United States Attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

(2) subsection (c), (h), or (i) of section 2 of the Narcotics Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), or

(3) the Act of July 11, 1941, as amended (21 U.S.C., sec 184*a*),

is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section. Added July 18, 1956, c. 629, Title II, § 201, 70 Stat. 574.

No. 122

In the Supreme Court of the United States

OCTOBER TERM, 1959

ARMANDO PIEMONTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
MALCOLM RICHARD WILKEY,
Assistant Attorney General,
BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 980

ARMANDO PIEMONTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A, 1–4) is reported at 276 F. 2d 148.

JURISDICTION

The judgment of the court of appeals was entered on February 29, 1960. A petition for rehearing was denied on May 3, 1960. The petition for a writ of certiorari was filed on June 2, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner was sufficiently apprised that, pursuant to the immunity statute (18 U.S.C. 1406), he

was required to answer questions he had theretofore refused to answer before the grand jury.

2. Whether the court's order to petitioner to answer questions was rendered invalid by the judge's oral statement that the court was granting immunity, where it was clear that the court was simply approving the procedure under 18 U.S.C. 1406 by which the Congress had authorized immunity in these circumstances.

3. Whether the court's written order to petitioner to answer questions was adequate.

4. Whether, after petitioner's refusal to answer certain questions despite the grant of immunity, the government was required to seek immunity for him with respect to further questions (not previously asked) before petitioner could be punished for refusing to answer the original questions.

STATUTE INVOLVED

18 U.S.C. 1406:

> Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—
>
> (1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,
>
> (2) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export

Act, as amended (21 U.S.C., sec. 174), or or

(3) the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a),

is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the Seventh Circuit affirming the judgment of the District Court for the Northern District of Illinois which convicted petitioner of contempt for refusal to answer questions before a grand jury after an order under the statutory procedure for

immunity with respect to narcotics violations (R. 48).[1] A sentence of 18 months' imprisonment was imposed (R. 48).

On August 10, 1959, after consultation with counsel, petitioner refused on grounds of self-incrimination to answer questions before a federal grand jury investigating narcotics and marihuana offenses (R. 4–13). On August 13, 1959, the United States Attorney, with the approval of the Attorney General, presented a petition under 18 U.S.C. 1406, *supra*, pp. 2–3, requesting the district court to order petitioner to testify before the grand jury without the excuse of self-incrimination (R. 10–13, 15, 18). Government counsel filed with the court a transcript of the questions before the grand jury and the refusals to answer (R. 16). After a colloquy between government counsel and the court (discussed in the Argument, *infra*, pp. 7–9), the court found the petition in proper form, found petitioner to be a necessary and material witness, and informed petitioner that the court granted him immunity from prosecution which might arise from any answers that he would give the grand jury concerning the matter of their investigation (R. 18–19). Petitioner stated that he understood the court's order. On his request for time to confer with his counsel, the court deferred further grand jury proceedings until the next day (R. 19). By written order dated and docketed the same day, the court found that petitioner had properly asserted his constitutional privilege and ordered him to testify relative to the inquiry

[1] The designation "R." refers to the Appendix to Appellant's Brief in the court of appeals below, filed as the record herein.

of the grand jury involving violations of specified statutes, without excuse by reason of self-incrimination, "in accordance with Section 1406, Title 18, United States Code" (R. 14–15).

Upon his return before the grand jury on August 14, 1959, petitioner again refused to answer the questions theretofore asked him. He also refused to answer some additional question (R. 21–26). He was brought before the court and his counsel was given access to the transcripts of the grand jury interrogations (R. 28–30). On August 18, 1959, petitioner (with his counsel) appeared pursuant to an order to show cause why he should not be held in contempt for refusing to answer the questions "propounded to him on the 10th day of August, 1959, which the Court had ordered him to answer" (R. 32–33). Petitioner offered as the "real basis" of his disobedience the danger to himself and to his family if he disclosed his associates in the narcotics traffic. He rejected further opportunities offered him by the court to purge himself of the contempt by testifying (R. 39, 41–44, 47).

ARGUMENT

1. Petitioner was directed by the district court to answer questions before the grand jury, pursuant to statutory grant of immunity under 18 U.S.C. 1406, *supra*, pp. 2–3.[2] The statute provides, in broad terms, that a witness required to testify after a claim of self-incrimination shall not be prosecuted or penalized

[2] Petitioner does not raise the issues of construction and of constitutionality pending before this Court in *Reina* v. *United States*, No. 664, October Term, 1959; certiorari granted, 362 U.S. 939.

for or on account of "any" transaction, matter, or thing concerning which he is compelled to testify. Petitioner's claim that he was not adequately apprised of his duty to answer is wholly unsupported.

No confusion as to the duty to answer was indicated either by petitioner or by his attorney in the district court, when clarification, if truly necessary, could have been made. Even as late as the contempt hearing, petitioner's counsel asserted that the reason for petitioner's refusal to answer was, not confusion, but petitioner's fear that he might endanger his life and his family by telling what he knew of the narcotics traffic (R. 39, 43). While it is true, as petitioner argues, that his giving of this concededly invalid excuse would not void sound additional bases for refusal to answer if such bases existed, the failure of petitioner seasonably to indicate any lack of understanding is persuasive that there was actually no such confusion.

Petitioner argues that confusion must have arisen from the fact that government counsel and the court made divergent utterances as to whether petitioner could assert the privilege against incrimination with respect to questions concerning narcotics sales for which he had already been convicted. But these statements of counsel and court were preliminary and tentative.[1] Before the statutory immunity was actu-

[1] Government counsel, at one time prior to the court's order, thought that petitioner had no privilege with respect to questions as to where he obtained the narcotics for which he had already been convicted, and at another time thought the reverse. The court, without making a ruling, merely suggested "doubt" that there would be privilege with respect to such questions (R. 17–18).

ally invoked, it was conceded that petitioner had a valid claim of privilege (R. 16). This finding that the privilege had properly been claimed was expressly embodied in the court's formal order (R. 14).

Petitioner had ample opportunity to consult with counsel. At the outset of his interrogation before the grand jury, he stated that he had seen his lawyer and had told the lawyer that he would invoke the Fifth Amendment as to all questions (R. 5–6, 19–20). After the first appearance before the grand jury, when the government presented its petition to the district court for an order directing petitioner to answer questions pursuant to statutory immunity, petitioner asked and was granted leave to consult with his attorney.[2] The grand jury was directed not to resume its interrogation until petitioner had had an opportunity to consult with counsel (R. 19–20). After petitioner's second refusal to answer questions, petitioner's attorney obtained a continuance for study of the transcripts.[3] Thus, there was full opportunity for petitioner or his counsel to seek clarification, if there was really any doubt as to the scope of the immunity being accorded under the statute.

Similarly groundless is petitioner's allusion to the informal language of government counsel before the

[2] The trial judge's remark "That is right", was not directed, as petitioner asserts (R. 35), to a remark of petitioner's counsel that petitioner had not had counsel. Counsel did so state but continued with the remark that he was called and appeared before the court on the 14th of August and was then authorized to examine the transcripts of petitioner's interrogation. The judge's agreement appears directed only to the latter portion of counsel's remarks, being the only portion of which the court had knowledge.

grand jury that the judge "granted you [petitioner] immunity and ordered you to answer questions propounded to you before this Grand Jury concerning narcotics" (R. 21). Petitioner contends that this reference "restricted petitioner's immunity to narcotics" and thus barred questions "unrelated to narcotics," such as those relating to marihuana (Pet. 11). Aside from the obvious fact that, in common parlance, marihuana is classified as a narcotic, the complete answer is that the informal remark of government counsel could not narrow, and was not intended to narrow, the broad direction to answer which was ordered by the judge. In fact, petitioner had refused to answer a question relating to marihuana in his earlier appearance before the grand jury (R. 6) and this question had been one of those presented to the judge when the government asked that petitioner be ordered to answer (R. 18). The court's orders and the statute both dissipate any doubt of immunity in this respect and, as we have emphasized, petitioner and his counsel expressed no doubt as to the scope of the immunity, either at the contempt hearing or before.

2. Petitioner also contends that the judge's oral order directing him to testify was void, because the judge stated that "this court now grants you immunity from prosecution" (R. 18). Congress, of course, not the judge, actually "grants" the immunity. The quoted remark was, however, merely part of an informal explanation to petitioner which, in full context, could neither be misconstrued nor serve to invalidate the order. The judge commenced his remarks with a reference to the petition of the United States

Attorney, stating, "I find the petition in proper form. The same is granted" (R. 18). The petition made specific reference to 18 U.S.C. 1406 (*supra*, pp. 2–3) and merely asked that the court direct petitioner to answer. Moreover, the judge continued (R. 18–19):

> And in accordance with the provisions of the Narcotic Control Act, this Court now grants you immunity from prosecution which might arise from any answers that you give to this Grand Jury concerning the matter of their investigation.
>
> It, therefore, is no longer necessary for you to invoke the protection of the Fifth Amendment to protect yourself from incrimination or subsequent prosecution, because pursuant to the provisions of the Narcotic Control Act, I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury.
>
> Do you understand the order of the Court?
>
> Mr. PIEMONTE. Yes, sir, your Honor.

In these circumstances, there could be no doubt that the immunity conferred was that pursuant to the statute. Petitioner was clearly not misled in any material way.

The written order contains no reference to any grant of immunity by the judge himself (R. 14–15), and that order would, of course, be controlling as against the informal oral explanations by the judge. *United States* v. *Hark*, 320 U.S. 531, 534–535; *Hill* v. *Wampler*, 298 U.S. 460, 464. Petitioner suggests, without so stating, that neither he nor his attorney saw the written order (Pet. 15), pointing out that the

written order does not bear the date stamp of the clerk (Pet. 15). The docket entry (R. 1), however, reads "8-13-59 Enter order directing Armondo Piemonte to answer certain questions before Grand Jury—Draft—Campbell, J." Furthermore, on August 13, 1959, Judge Campbell deferred further grand jury questioning so that petitioner would have full opportunity to confer with his attorney (R. 19). There was no barrier to examination of the written order by petitioner's attorney, for, as distinguished from other grand jury documents, the docket entries do not include that order among the matters "Suppressed & Impounded" (R. 1).

3. Petitioner challenges the written order on the ground that the court failed to make findings that the allegations in the petition were true, *i.e.*, that the grand jury was investigating certain federal narcotics law violations and that petitioner's testimony was in the public interest (Pet. 18). The court, under the immunity procedure, is not required to go behind the determination of the Attorney General and the United States Attorney that the witness' testimony is in the public interest. *Ullmann* v. *United States*, 350 U.S. 422, 434;[5] *United States* v. *Fitzgerald*, 235 F. 2d 453 (C.A. 2), certiorari denied, 352 U.S. 842. And see *In re McElrath*, 248 F. 2d 612, 617 (C.A.D.C.):

> The discretion of the District Court is limited at this stage to a determination of the procedural regularity of an application * * *.

[5] See the unavailing contention similar to that of petitioner in *Ullmann* v. *United States*, *supra*, No. 58, October Term 1955, Pet. Br. 59.

Petitioner's further contention, that the written order narrows the immunity to only a portion of the testimony (Pet. 18), is likewise without basis. The order relates to any question asked petitioner "relative to the aforementioned inquiry of said Grand Jury" (R. 15), *i.e.*, the inquiry then being conducted by that particular grand jury. In any event, the broad language of the immunity statute assures the immunity once the witness has been ordered to and does answer.

4. Petitioner alludes to the fact that upon his return to the grand jury on August 13, 1959, he was asked some questions not asked in his prior appearance. But these questions were not involved in the order to show cause with respect to criminal contempt, which related to "questions propounded to him on the 10th day of August, 1959 [the date of the first appearance], which the Court had ordered him to answer" (R. 33). In addition, we submit that when petitioner, after having been granted immunity, nevertheless defied the direction to answer the earlier questions, there was neither public interest nor duty on the part of the government to seek a further order with respect to immunity. The original order, as we have noted, was broad enough to cover all questions asked by that grand jury in the course of that particular inquiry.

Finally, there is no pertinence in petitioner's reference to the fact that the grand jury subsequently indicted him as a participant in a narcotics conspiracy. The statutory immunity is granted with respect to facts relating to testimony *given* under court order, and not with respect to facts as to which testimony is *withheld* in defiance of the order (*supra*, pp. 3, 5–6).

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1960.

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IN THE

Supreme Court of the United States

October Term, 1960

No. 122

ARMANDO PIEMONTE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Brief of Appellant

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INDEX

AUTHORITIES CITED

Cases

Statutes

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Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Brief of Appellant

A. REFERENCE TO REPORTS.

There is no official or unofficial published report of the judgment of the trial court. The trial court delivered no formal opinion.

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 276 F. 2d 148. It is reprinted at pages 49 through 52 of the transcript of record.

B. JURISDICTIONAL GROUNDS.

This Court's jurisdiction is invoked under Title 28, United States Code, Section 1254 (1) and under Rule 19(b) of the rules of this Court.

The opinion of the Court of Appeals was rendered on February 29, 1960. Appellant's petition for rehearing was denied on May 3, 1960. Appellant's petition for certiorari was filed on June 2, 1960, and was granted on October 10, 1960.

C. STATUTES INVOLVED.

Title 18 United States Code, Section 1406, relating to immunity of witnesses, provides as follows:

IMMUNITY OF WITNESSES

Whenever in the judgment of a United States Attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

(2) subsection (c), (h), or (i) of section 2 of the Narcotics Drugs Import and Export Act, as amended 21 U.S.C., sec. 174), or

(3) the Act of July 11, 1941, as amended (21 U.S.C., sec. 184*a*),

is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or pro-

duce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

Petitioner was sentenced under Title 18 United States Code, Section 401, which in its relevant part provides:

> "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> * * * * * *
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

D. QUESTIONS PRESENTED FOR REVIEW.

I. Whether a prisoner in a federal penitentiary could properly be taken before a Grand Jury, granted "immunity" to testify as to narcotics transactions, held in contempt of court following his refusal to answer and given a substantial sentence, where the procedure followed leaves doubt as to whether or not immunity was actually sub-

stituted for a constitutional privilege; where, if immunity did ensue, the witness was necessarily left in doubt as to whether he was granted immunity; where orders entered upon him to testify were defective in form; where court and prosecutor openly differed as to his constitutional rights and as to what was required of him; and where he was thereafter indicted by the same Grand Jury?

II. Whether one can be held in contempt of a void verbal order which he fails to obey, or a written order which is never served upon him or otherwise brought to his attention?

E. CONCISE STATEMENT OF THE CASE.

On August 10, 1959 appellant was called as a witness before a Grand Jury (R. 4). In response to questions, he identified himself, and admitted that he was then imprisoned in Leavenworth penitentiary for narcotics violations. Asked where he had obtained the narcotics for the sale of which he had been sentenced, he claimed privilege under the Fifth Amendment. The prosecutor suggested he had no privilege relative to that question, but the witness persisted in his refusal (R. 5) and further refused to testify as to whether he knew certain named persons, had obtained from them the heroin involved in his conviction and the like (R. 5-8).

Three days later, petitioner was brought before the District Court (R. 13, 14). Although the identity of the lawyer then representing appellant was known to the prosecutor (R. 5), he was not notified and appellant was not represented at the hearing.

The prosecutor gave the court a transcript of appellant's grand jury testimony, and stated that he now felt that the appellant's claim of privilege was proper (R. 14). The

court replied that the privilege against self-incrimination had been properly claimed by appellant, except that it did not apply to questions concerning the source of the heroin involved in his prior conviction (R. 15).

In response to the court's statements, the prosecutor presented a petition (R. 9) which stated that the court had found that the appellant had properly claimed his privilege against self-incrimination in the course of the Grand Jury's investigations of narcotics violations, and that his testimony was in the public interest (R. 9). Appended to the petition was the affidavit of the United States Attorney setting forth that the Grand Jury was investigating illegal traffic in narcotics, and that the public interest required appellant's testimony. The affidavit further stated that the public interest required that the appellant be granted immunity in connection with his testimony, and that the application was made "in complete good faith". There was further appended a letter from the Attorney General authorizing the application (R. 10-11).

The court ordered that the transcript be filed and the file suppressed (R. 16). The court further found the petition to be in proper form and orally granted it (R. 16).

The court thereupon advised appellant as follows:

> ". . . this Court now grants you immunity from prosecution which might arise from any answers that you give to this Grand Jury concerning the matter of their investigation. It, therefore, is no longer necessary for you to invoke the protection of the Fifth Amendment to protect yourself from incrimination or subsequent prosecution, because . . . I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury." (R. 16)

Asked whether he understood the court's order, appellant replied that he did, but that he would like to talk to his lawyer. The court granted permission and directed that appellant's lawyer be telephoned (R. 16). The court further ordered that appellant not be further interrogated until he had seen his attorney (R. 17).

In its written order, which was entered on application of the United States Attorney, the court found only that appellant's answers would tend to incriminate him, and "therefore ordered" that the appellant answer questions before the Grand Jury "relative to the aforementioned inquiry of the said Grand Jury"—*i.e.*, investigation of violations of certain narcotics statutes (R. 12, 13).

The written order was not presented, mentioned or entered in appellant's presence. There is no record of any proceedings incident to the signing of this order, nor is the order shown to have been served on the appellant or otherwise brought to his attention. The earlier impounding order was not modified in favor of inspection by petitioner's attorney until after the appellant's second Grand Jury appearance (R. 25).

On the morning of August 14, appellant was again brought before the Grand Jury. He acknowledged the prosecutor's assertion that on the previous day, the trial court had granted him immunity and ordered him to answer questions "concerning narcotics" (R. 18). Appellant again admitted the fact of his conviction (R. 18, 19). He refused, however, on grounds of possible self-incrimination, to answer any of the prosecutor's other questions (R. 19).

The questions propounded to him on his second Grand Jury appearance dealt with transactions in marijuana and in heroin, with particular reference to the source of the

narcotics he had been convicted of selling (R. 19). Many questions were identical or substantially similar to questions put to him at the time of his first appearance. Other questions had not been asked previously. Among the questions not put to him until his second Grand Jury appearance, were whether he knew Nathaniel Spurlark; whether he had supplied Spurlark with heroin; whether he knew Jeremiah Pullings; whether he had supplied Pullings with heroin; and whether he knew Spurlark or Pullings to be "one of the largest wholesalers of heroin in the illicit traffic business in Chicago" (R. 22).

On September 2, 1959 the same Grand Jury before which appellant had appeared, indicted both appellant, Pullings, and others for conspiring to violate narcotics statutes, commencing in 1954 (R. 43).

A few hours after his second Grand Jury appearance, appellant was returned to the District Court (R. 23). His attorney being present for the first time (R. 30), he persisted in his refusal to answer questions (R. 24). An order was issued against defendant to show cause why he should not be punished for contempt. Formal answer to the rule was waived, and hearing was set for the following week (R. 24-25). Defendant's motion for jury trial was denied (R. 26).

The formal order entered against petitioner on that date (R. 27) cited him "for wilfully . . . blocking the search for truth . . . of the said Grand Jury . . . and obstructing the administration of justice"; and for wilful disobedience of the court's order requiring his testimony (R. 28).

On August 18, 1959, hearing was had before the court. The government rested on the transcripts filed (R. 29). Defendant testified that the basis of his refusal to answer

the questions was fear for his own life and for that of his wife and stepchildren (R. 33).

The court adjudged the appellant in contempt (R. 38) and sentenced him to a term of eighteen months' imprisonment, to commence upon the termination of his current term of imprisonment (41).

The Court of Appeals for the Seventh Circuit affirmed the judgment (R. 49-53). This Court granted certiorari.

G. ARGUMENT.

I.

The proceedings in the District Court do not afford an adequate basis to sustain a finding of contempt.

The opinion of The Court of Appeals was predicated upon two propositions: first, that fear of underworld retaliation did not provide a basis for refusing to testify. That proposition was laid to rest by the brief in opposition to our petition for certiorari, the government conceding that a man's motive for embracing his constitutional privilege is irrelevant if the privilege in fact exists (Gov't. Br. in Opp. 6).

The second proposition enunciated by The Court of Appeals was that: If the proceedings in the Trial court were sufficiently regular to have conferred immunity had appellant testified, then appellant's refusal to testify necessarily constituted contempt of court.

The question, we submit, is not whether the proceedings were sufficiently regular to have conferred immunity. The question is whether the proceedings below were so irregular that a refusal to rely upon their validity could constitute a punishable contempt of court.

* * *

Section 1406 provides a ritual which culminates in statutory immunity:

(a) A witness is interrogated before a grand jury or court.

(b) He must properly claim his privilege against self-incrimination in response to one or more specific questions.

(c) An application in conformance with the statute must be presented to the court.

(d) The court must approve the form of all prior proceedings and of the application itself, and must thereupon order that the witness answer one or more questions.

(e) The witness must thereupon answer the specified questions.

This procedure compares to that of the House of Commons relative to coerced testimony, commended in *Quinn* v. *United States*, 349 U.S. 155, 167. We invite the Court to contrast the procedures followed here.

At the time of his grand jury appearance, appellant stood convicted of sale and possession of heroin (R. 4). The prosecutor conducted an extensive inquiry concerning the unlawful *acquisition* of that heroin. But acquisition involves offenses distinct from unlawful sale and possession. (*Cf.* Title 26 U.S. Code, Sections 4705 (a) and 4705 (g); Title 21 U.S. Code, Sec. 174). Thus answers to the questions would surely have exposed appellant to possible prosecution for substantive offenses or conspiracies of which he had not been convicted.

The questions put to appellant were not addressed, except inferentially, to the offenses of which appellant was convicted. Instead, the questions related directly to offenses with which appellant had not then been charged. The court will note that this same grand jury indicted appellant for a conspiracy involving Pullings, about whom he was questioned. It is thus obvious that appellant was entitled to assert his privilege. This differs vastly from the state of affairs in *Reina* v. *United States*, No. 29, de-

cided by this court on December 19, 1960. Reina asked immunity from further execution of his sentence; appellant sought protection against further indictments.

Appellant took sanctuary in his privilege not to incriminate himself despite the prosecutor's expressed stand (R. 5) that appellant had no privilege as to questions relating to the acquisition of the heroin for whose sale appellant was convicted.

The sequence of events as it related to the claim of privilege in this area was:

1. The prosecutor advised appellant that he had no privilege (R. 5).
2. The prosecutor thereupon, in appellant's presence, told the court that he thought the privilege was properly asserted (R. 14).
3. The court disagreed, holding that appellant could not assert his privilege as to those matters (R. 15).
4. The court "granted immunity" and ordered appellant to "answer the questions propounded . . . by the grand jury." (R. 16).

It would seem that the most important question before the trial court was: Had appellant properly invoked the Fifth Amendment so that he might qualify for immunity under 18 U.S.C. 1406?

Yes, replied the trial court, but with one reservation. The trial court held that the constitutional privilege would not apply to ". . . questions . . . concerning the heroin for the sale and possession of which he is now serving a term". (R. 15)

But this included almost every question asked of appellant. At his first grand jury appearance, he had been

asked whether he knew fourteen different people. As to twelve of them, he was asked whether he had obtained from them the heroin, for the sale of which he was then imprisoned. (R. 5-8) A thirteenth, Helen Mack, was appellant's co-defendant at the time of his conviction (R. 8). The fourteenth, Lawrence Geraci, was mentioned in connection with the possible purchase by him from appellant of marihuana, a subject matter for investigation which falls outside the immunity statute (R. 5).

In essence therefore, appellant was told that he was getting immunity except where it counted. For presumably a witness could not win immunity should his claim of privilege be held to have been improperly asserted.

Hard on the heels of the court's ruling that appellant's claim of privilege was improper as to most of the matters put to him by the grand jury, the prosecutor presented (R. 16) a sworn petition to the effect that the court had not so held (R. 9). The Court of Appeals subsequently placed upon the court's ruling the interpretation that the trial judge found ". . . that the privilege was well taken except as to those questions asked on August 10 relating to the source of the narcotic drugs upon which his prior conviction rested." (R. 50).

A written order (R. 12-13) was subsequently entered which was itself in opposition to the court's verbal order. The written order found that appellant's privilege was properly asserted—presumably in all areas. There is no suggestion in the record that the written order was ever brought to appellant's attention. Indeed an earlier order impounding the file (R. 16) was not modified so as to permit inspection by appellant's attorney until the contempt citation had issued (R. 25).

But had appellant seen the written order, he could only have concluded that the trial court shared the prosecutor's fluctuating views as to the propriety of his attempted assertion of constitutional privilege.

In any event the written order was ineffective. It recited that a petition had been presented, and described it (R. 12). It contained a finding that appellant had properly asserted his constitutional privilege. It found that appellant's answers would tend to incriminate him. And it "therefore" ordered him to answer. (R. 13). The order recited that it was made "in accordance with Section 1406." But the order contained none of the findings relative to the regularity of the petition, that are required if a valid grant of immunity is to ensue from Section 1406. *Corona* v. *United States*, 6 Cir., 250 Fed. 2d 578, 579 (1958). Nor did the order state what questions appellant was required to answer. Nor did the written order even find that the prosecutor's petition was in proper form. Appellant would have been hard pressed to substantiate the regularity of the proceedings at a later date were he to have placed reliance in the written order.

Appellant's refusal to answer questions must be judged in the light of the circumstances which obtained at the time of his second grand jury appearance. *Bart* v. *United States*, 349 U.S. 219, 222. His position was not one where he might with impunity have surrendered his claim of constitutional privilege, confident that he could reassert it if the trial court were in error. *Powell* v. *United States*, D.C., Cir., 226 F. 2d 269, 276. The court's verbal assurances to the petitioner would have been insufficient protection at a later stage, had he been exposed to prosecution. *Foot* v. *Buchanan*, 5 Cir., 113 Fed. 156 (1902).

Appellant could not at his second grand jury appearance have possessed even a reasonable assurance as to what questions he was supposed to answer. All of them? The court held that his privilege had been improperly asserted as to the source of the heroin involved in his conviction; *ergo*, immunity could not attach in that area. Answer whether he knew the people named, but decline to answer whether he had obtained the heroin from them? This might well be a waiver of the privilege to refuse to state where he had obtained the heroin.

The only safe course for appellant was to persist in his claim of constitutional privilege. As distinguished from the proceedings in the trial court, the law requires that contempt be predicated only upon a foundation which is clear, incisive, and leaves no doubt as to what is required to be done. *National Labor Relations Board* v. *Deena Artware*, 6 Cir., 261 F. 2d 503, 509; *Traub* v. *United States*, D.C. Cir., 232 F. 2d 43, 48-49.

We further contend, that appellant is not a member of that class of persons upon whom punishment can be visited under the provisions of 18 U.S.C. Sec. 1406.

After appealing his sentence for contempt (R. 42), appellant was indicted by the same grand jury before which he had refused to testify (R. 43). But the Court of Appeals failed to accord due significance to the indictment. Its significance is this: The indictment relieved appellant of the consequences of his supposed contempt in refusing to testify. In effect, the return of the indictment purged the contempt.

Section 1406 does not authorize compulsion of the testimony of *any* witness. Its effect is limited to that witness whose refusal to testify is based upon his "having claimed his privilege against self-incrimination."

The privilege against self-incrimination is distinct from the privilege against being a witness in a criminal case against one's self. It is only the former privilege and not the latter for which Section 1406 can become a substitute.

By his indictment it became conclusive that the proceedings of the grand jury were part of a criminal prosecution directed against the appellant. *Counselman* v. *Hitchcock*, 142 U.S. 547, 562; *United States* v. *Monia*, 317 U.S. 424, 427. Accordingly, he was entitled to a privilege transcending his privilege not to incriminate himself. As a defendant he had an *absolute* right to refuse to testify.

That fact alone precluded his use as a witness by the prosecution. *Powell* v. *United States*, D.C. Cir., 226 F. 2d 269, 274.

From the express words of the Constitution, has arisen a derivative doctrine: In no investigation may a witness be compelled to say something that might be used against him in a subsequent criminal case in which he might be a defendant. The derivative doctrine is indispensable if the self-incrimination clause is to have practical value. It would avail nothing that a defendant might not be called as a prosecution witness, if he might be compelled to give the same testimony elsewhere for later use at his criminal trial.

There is a significant difference between the application of the express provision of the Constitution on the one hand, and the derivative doctrine on the other. Under the express provision, a defendant in a criminal case may simply refuse to testify, without assigning reasons. But a witness who is not then a defendant in criminal proceedings must avail himself of the derivative doctrine if he would remain silent. The witness, as opposed to the defendant, must assign reasons for refusal to testify suffi

ciently to bring himself within the scope of the Fifth Amendment, namely, that his testimony might tend to incriminate him. He is excused only as to specific matters as to which he claims privilege. Thus his privilege is merely conditional.

A further distinction between the absolute and conditional privileges is in point. When one is called merely as a witness, it cannot be assumed that answers will tend to incriminate, hence no privilege attaches before a claim of privilege is made. On the other hand, the absolute privilege follows as a matter of constitutional course from one's status as a defendant. It need not be claimed. It is there, obvious for all to see.

Section 1406 provides that if certain procedures are followed a *witness* may not assert the *conditional* privilege. In exchange for his privilege, he is granted immunity from prosecution. He is, therefore, ". . . not . . . excused from testifying . . . on the ground that the testimony . . . may tend to incriminate him. . . ." That is all that Section 1406 provides. Section 1406 does not abrogate the *absolute* privilege; it does not impair the right of a *defendant* in a criminal case to refuse to become a witness on any ground or none.

When Piemonte appeared before the Grand Jury, he claimed the only privilege then ostensibly available to him. The procedures undertaken under Section 1406 purported to strip him of his right to refuse to testify on the grounds of possible self-incrimination. The trial court considered that his persistent refusal constituted contempt.

However, by indicting Piemonte, the Grand Jury ratified his refusal to testify by disclosing that throughout the proceedings Piemonte had been absolutely privileged to refuse to be a witness at all.

The grand jury proceedings were, as it turned out, a part of a criminal case against appellant. Therefore, proceedings under Section 1406 could not have compelled appellant to testify. Proceedings under 1406, if valid, only deprived him of the right to refuse on the grounds that his testimony might incriminate him. But Section 1406 proceedings could not impair appellant's absolute right to refuse to be a witness against himself in a criminal case. The questions put to appellant before the grand jury were closely related to his eventual indictment. He was asked if he had been in the narcotics business in 1954 (R. 19). The indictment alleged that in 1954, he entered into a conspiracy for the sale of narcotics (R. 43, 44.) He was asked if he knew Jeremiah Pullings, or had supplied Pullings with heroin (R. 22). The indictment alleged that Pullings had joined with appellant in the alleged conspiracy (R. 44.) Not only were the grand jury proceedings a part of a criminal case against appellant, but the very questions asked of appellant related directly to allegations made within his subsequent indictment.

Appellant should not be punished for refusing to testify before the grand jury. As it turned out appellant was well within his rights in so refusing. Under Section 1406, he might be stripped of his right to avoid answering on the ground of possible self incrimination. But he was never stripped of his paramount right to refuse to be a prosecution witness against himself in a criminal case.

II.

The verbal order of court requiring petitioner's testimony was void, so that petitioner could not properly be held in contempt for refusing to comply with that order. The record is absolutely barren of evidence to the effect that the Trial Judge's written order, which may or may not have been a valid order, was brought to the notice of petitioner, so that petitioner could not be in contempt for failure to comply with that order.

On August 13, 1959 the District Judge, in petitioner's presence in open court, stated that he, the Judge, was conferring immunity from prosecution: ". . . this court now grants you immunity from prosecution . . ." and ". . . I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury" (R. 16).

The court's order was clearly void. The court lacked power himself to grant immunity from prosecution. *Isaacs v. United States*, 8 Cir., 256 F. 2d 654, 661 (1958) held that an attempt by a trial judge to grant immunity in exchange for testimony constituted an invasion of executive and legislative powers. See also *Ullmann v. United States*, 350 U. S. 422, 434 (1956) The court's authority was limited to making certain findings, *i.e.*, whether the statutory requirements were complied with by the Grand Jury, the United State's Attorney, and the Attorney General. *Ullmann v. United States, supra*, 434; *Corona v. United States*, 6 Cir., 250 F. 2d 578, 579 (1958).

The Court of Appeals for the Seventh Circuit, in reviewing this case seemed to concede the invalidity of the verbal order:

> "Strictly speaking, the criticism may be well founded that the court itself could not grant immunity." (R. 52)

The opinion explained that the situation was really alright, because the trial judge had merely adopted his own way of expressing to petitioner the immunity granted by the statute. But the defect in the situation derived from the facts that: (a) the judge's verbal order was nonetheless void because the judge had no authority to grant immunity, and, (b) The written order which was entered was never shown to have been brought to petitioner's attention.

If the verbal order was void, petitioner could properly fail to comply with it. If petitioner did not have actual notice of the written order, assuming it to be valid, his failure to comply with it could not form a basis for contempt. Nothing in the record suggests that petitioner had an opportunity to examine it prior to his refusal to testify at his second Grand Jury appearance. For aught it appears, the written order was entered *ex parte*. The record raises doubts as to whether or not the written order was even available for examination prior to petitioner's second appearance before the Grand Jury. The written order does not have the stamp of the clerk of court thereon, from which it might be determined when the order was filed. If the order was simply signed on the date it bears, was never shown or read to petitioner, and was not even available in the office of the clerk of court for inspection by petitioner or someone acting for him, the order would, in petitioner's eyes, simply not exist. Such is the state of the record that it not only fails to show beyond a reasonable doubt that petitioner had notice of the written order, but it appears affirmatively that petitioner could not have had notice of that order. Thus the only order of which petitioner had notice was the court's void verbal order.

But one cannot be punished for contempt of a court order unless he has actual notice of that order. Further, in the sort of case before this Court, the government has the burden of proving that the supposed contemnor had such actual knowledge. Thus in *United States* v. *Hall*, 2 Cir., 198 F. 2d 726, 729 (1952) the court observed that under 18 U. S. C., Section 401(3):

> "... there must be proof of the contemnor's knowledge of the order ... and the burden on the government is a high one."

Nor is constructive notice of the order entered sufficient. There must be actual knowledge of the entry of the order, and the government must prove that knowledge by substantial evidence, *United States* v. *Thompson*, 2 Cir., 261 F. 2d 809, 810 (1958).

In *Green* v. *United States*, 356 U. S. 165 (1958), this Court acknowledged the existence of the rule requiring actual knowledge, holding (pp. 178-179) that the District Judge was justified in finding that the evidence established, beyond a reasonable doubt, that the contemnors there knew of the order which formed the basis of the citation. One Justice, dissenting on a question of fact, stated the rule which the majority assumed to be the correct rule, in the following language:

> "The indispensable element of that offense [violations of 18 U. S. C., Section 401 (3)] is that the petitioners, who were not served with the order, in some other way obtained actual knowledge of its existence and command." *Green* v. *United States*, 356 U.S. 165, 221 (1958)

In the matter before your Honors no showing of any kind was made that the petitioner was either served with or had actual knowledge of the order for whose violation

he was sentenced. He only had knowledge of an order which was void and which he had every right not to obey.

CONCLUSION.

We respectfully urge that whether or not the proceedings below were sufficiently regular to have conferred immunity as to testimony sought to be compelled, they were so irregular that a refusal to rely upon their validity could not constitute a punishable contempt of court. We ask this Court to reverse appellant's conviction.

Respectfully submitted,

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No. 122

In the Supreme Court of the United States

OCTOBER TERM, 1960

ARMANDO PIEMONTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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INDEX

CITATIONS

583177--61 ——1

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 49–52) is reported at 276 F. 2d 148.

JURISDICTION

The judgment of the Court of Appeals was entered on February 29, 1960 (R. 53) and a rehearing was denied on May 3, 1960 (R. 54). The petition for a writ of certiorari was filed on June 2, 1960 and was granted on October 10, 1960 (R. 54), 364 U.S. 811. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner understood that he had been granted immunity and that he would be subject to punishment for contempt if he persisted in refusing to testify before the grand jury.

2. Whether the procedure followed in applying the immunity statute (18 U.S.C. 1406) was proper.

3. Whether petitioner's liability in contempt for refusing to testify before the grand jury is affected by the fact that he was subsequently indicted by the same grand jury for an independent violation of law.

STATUTE INVOLVED

18 U.S.C. 1406 (part of Section 201 of the Narcotic Control Act of 1956), 70 Stat. 574, provides:

> Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—
>
> (1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,
>
> (2) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), or
>
> (3) the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a),
>
> is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall

be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.

STATEMENT

Petitioner, having been previously granted immunity from prosecution under 18 U.S.C. 1406, was held in contempt for willfully refusing to obey the District Court's order to testify before a grand jury investigating violations of federal narcotic laws (R. 38). He was sentenced to imprisonment for 18 months (R. 42). The Court of Appeals unanimously affirmed (R. 53).

On August 10, 1959, petitioner appeared as a witness before the federal grand jury in the Northern District of Illinois (R. 1, 4). He was then serving a six year term for two sales of heroin (R. 4).

When asked to inform the grand jury where he obtained the heroin, he declined to answer, claiming his privilege under the Fifth Amendment (R. 5). He stated, at the same time, that he had been permitted to consult with his counsel. Upon being questioned further about the narcotics business, the selling of marihuana, his acquaintance with persons dealing in narcotics and the possible sources of heroin, he again claimed the privilege (R. 5–8).

On August 13, 1959, the government applied to the court for an order, pursuant to 18 U.S.C. 1406, *supra*, directing petitioner to answer the questions (R. 9–10). The application stated that the grand jury was investigating illegal trafficking in narcotics and that petitioner, when questioned on matters relating to the federal narcotic laws, had claimed the privilege against self-incrimination (R. 9). A supporting affidavit of the United States Attorney stated that it was in the public interest that petitioner be granted immunity, and that the submission of the application was approved by the Attorney General (R. 10–12).

At the hearing on the application, the government presented a transcript of the grand jury proceeding (R. 14–15). The District Judge expressed doubt as to whether the privilege applied to those questions "concerning the heroin for the sale and possession of which" petitioner was convicted, "but as far as all of the rest of the testimony that you referred to, I certainly think that it would tend to incriminate the witness * * *" (R. 15). The government then filed the application (R. 15), and the court, finding it to be "in proper form," ordered it "granted" (R. 16).

The court explained to petitioner (R. 16):

> * * * Pursuant to the application * * * I find that you are a necessary and material witness to the Grand Jury investigation * * *
>
> * * * And in accordance with the provisions of the Narcotic Control Act, this Court now grants you immunity from prosecution which might arise from any answers that you give to this Grand Jury concerning the matter of their investigation.
>
> It, therefore, is no longer necessary for you to invoke the protection of the Fifth Amendment to protect yourself from incrimination or subsequent prosecution, because pursuant to the provisions of the Narcotic Control Act, I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury.

The court then inquired whether petitioner understood the order and petitioner replied, "Yes, sir, your Honor" (R. 16). Petitioner asked whether he could talk to his lawyer, and the court directed that the grand jury interrogation be suspended "until tomorrow morning, after the witness has had an opportunity to confer with his attorney" (R. 16–17). The court admonished petitioner that, upon failure to abide by the order, he would be cited for contempt (R. 17). Once again, the judge stated (*ibid.*):

> You are at this time, however, granted immunity from prosecution and directed to answer the questions. * * * .

On the same date, a written order was signed by the court. It states in pertinent part that petitioner properly asserted his constitutional privilege against

self-incrimination in declining to answer the questions put by the grand jury, and concludes (R. 13):

> It is Therefore Ordered that the said Armondo Piemonte if and when called before the Grand Jury to testify and produce evidence before said Grand Jury relative to the aforementioned inquiry of said Grand Jury, that the said Armondo Piemonte shall not be excused from testifying or producing evidence before said Grand Jury on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but shall answer said questions.
>
> This order is made in accordance with Section 1406, Title 18, United States Code.

On August 14, 1959, petitioner again appeared before the grand jury. He acknowledged as correct the assertion of the government's attorney that the judge "granted you immunity and ordered you to answer questions propounded to you before this Grand Jury concerning narcotics" (R. 18). Thereafter, however, petitioner declined to answer the questions on the ground that the answers would tend to be incriminating (R. 19–22).

On August 14, 1959, the court entered an order to show cause why petitioner should not be held in criminal contempt (R. 27–28). The order recited that the court, after hearing, had found the application of the government proper, had ordered petitioner to answer the questions propounded on August 10, 1959; that petitioner was granted immunity as provided in 18 U.S.C. 1406; and that, on August 14, 1959, with petitioner present in open court, the court

had been advised that petitioner had refused to answer the questions (R. 27–28).

On August 18, 1959, a hearing was had on the order to show cause (R. 29). Petitioner was represented by counsel (R. 29). The government's case consisted of the transcripts of testimony before the grand jury (R. 30). Petitioner's counsel, who had read the transcripts and discussed the questions with petitioner (R. 30), introduced some newspaper articles and complained that his client's testimony was not being kept secret (R. 30–32), but the court noted that the newspaper contained only matter discussed in open court (R. 32).

Petitioner took the stand and explained the basis for refusing to answer the propounded questions as follows (R. 33):

> Well, I am doing time in the penitentiary. I fear for my life. I fear for the life of my wife, my two step-children, and my family. I can't do something like that. I want to live, too.

In summation, counsel argued (R. 36–37) that the "real basis" for petitioner's refusal to testify was "his fear of safety for himself and his family." The court commented (R. 38):

> It may well be his real reason, but that is not a legal reason for failure to obey my order.

Before imposing sentence the court, twice asked petitioner whether he persisted in his refusal to obey the order, and petitioner indicated that he would not answer the questions (R. 38, 40).[1]

[1] On September 2, 1959, the grand jury indicted petitioner and 12 others in one count for conspiring to violate the narcotic laws (R. 43–48).

583177—61——3

On February 29, 1960, the court of appeals unanimously affirmed the contempt finding, stating (R. 51) that the "record clearly demonstrates that Piemonte understood what questions he was ordered to answer." The Court of Appeals observed that Judge Campbell had been very patient with the witness and had given him many opportunities to testify, but that petitioner had steadfastly refused (R. 52). It also held (R. 52) that, though the District Court itself could not give immunity, "the statute granted the immunity and the manner in which Judge Campbell expressed that immunity was not in any way confusing to Piemonte."

SUMMARY OF ARGUMENT

I

Petitioner contends in this Court (although he did not make the argument in the District Court) that there was a lack of clarity in the order which he was charged with disobeying. An examination of the District Court proceedings demonstrates that this claim has no foundation.

When petitioner was first called before the grand jury (which was investigating narcotics traffic), he claimed the privilege against self-incrimination. The prosecutor and the District Judge had doubts as to whether the privilege had been validly claimed in all instances, since it appeared that certain of the questions which petitioner had refused to answer related to transactions for which petitioner had already been convicted. No effort was made, however, to segregate matters as to which the privilege might not be available from the many other matters which were admit-

tedly subject to a claim of privilege. Instead, the prosecutor decided, in the interest of obtaining all of petitioner's testimony, to present an application to grant petitioner immunity under the Narcotic Control Act of 1956.

Since the District Judge approved the application to grant immunity, the only relevant consideration, for present purposes, is whether the accompanying order made it clear that petitioner would be required, upon his reappearance before the grand jury, to answer all questions put to him in connection with the matters under investigation. The court told petitioner that he was being granted immunity, that it would no longer be necessary to invoke the privilege, and that he would be protected "from prosecution which might arise from any answers that you give to this Grand Jury concerning the matter of their investigation." This was unmistakably plain, and petitioner acknowledged that he understood. The court also warned petitioner that a failure to comply with the order would subject him to punishment for contempt. Finally, the court arranged for petitioner to consult with his lawyer prior to resumption of the grand jury proceedings.

Nevertheless, petitioner again refused to testify when the grand jury proceedings were resumed. An order to show cause why he should not be held in criminal contempt and a hearing on that issue ensued. At that hearing, petitioner, who was represented by counsel, advanced no claim that he had failed to understand the court's order to testify. Instead, petitioner's counsel contended that the real reason for

petitioner's reluctance to comply was his fear of underworld reprisals. If, in fact, there had been any confusion or misunderstanding on petitioner's part, that could have been readily corrected at the contempt hearing. The judge expressed complete willingness to afford petitioner another opportunity to testify.

Although petitioner does not renew in this Court his argument to the District Judge that one who is in fear of reprisal should not be required to testify, we believe it appropriate to state our reasons for believing that the District Court properly rejected this contention. Acceptance of claims of that kind would encourage widespread recalcitrance by witnesses. Even more serious, it would put the courts in the position of sacrificing the processes of the law to the threats of the lawless. Government, to be sure, has the duty to take appropriate steps to protect persons who reasonably apprehend danger; but it also has the duty to protect the citizenry at large by insuring that law enforcement shall not be at the sufferance of those who are prepared to make threats in order to suppress evidence. The performance of the one does not require or justify the abandonment of the other.

II

There were no technical defects in the grant of immunity.

A. Petitioner quarrels with the District Court's statement, "I now grant you immunity." It is true that the immunity is conferred by operation of the statute when the judge approves the application and that the judge is an instrument by which immunity

is conferred rather than its source. It does not follow, however, that the judge's phraseology was misleading or prejudicial.

B. Contrary to petitioner's argument, it is plain from the face of the Narcotic Control Act that the immunity provision of that statute covers transactions involving marihuana as well as transactions involving other narcotics.

C. Petitioner argues that it does not affirmatively appear that he saw the court's written order directing him to testify. But since petitioner was ordered to testify in open court, it is immaterial whether he was in fact served with the written order, entered the same day, which did no more than confirm the order as orally announced.

D. The argument that the District Judge did not make "findings" before granting immunity is without substance. The judge is not required to determine whether it is in the public interest to grant immunity. The executive branch performs that function. *Ullmann* v. *United States*, 350 U.S. 422, 432–434. The court must find only that the application is in proper form. The District Court made a specific finding that it was. And petitioner does not challenge the proposition that the application did in fact meet all the statutory requirements.

III

The indictment of petitioner for narcotics violations does not bear on his liability for the contempt previously committed and punished.

One directed to testify under the immunity statute is accorded immunity in relation to those matters

concerning which he in fact testifies. But even if the statute could be read to grant immediate and unconditional immunity in relation to matters concerning which he is *directed* to testify, it could not conceivably confer immunity from the consequences of a willful refusal to obey the directive. Such disobedience is, by any standard, a contempt.

Petitioner also argues that he was a *de facto* defendant when initially called by the grand jury. If the record supported this (which we dispute) and if petitioner, in ignorance of his rights, had proceeded to testify before the grand jury (in fact, he asserted his privilege and refused to testify), there would be some basis in precedent for arguing that the *indictment* subsequently returned by the grand jury was tainted. But the point would in all events be irrelevant to the *contempt* issue now before this Court. For present purposes, the significant point is that petitioner assuredly had a privilege to remain silent when he appeared before the grand jury (whether he be considered an ordinary witness or a putative defendant), but lost that privilege when granted immunity. The whole purpose of the immunity statute is to provide a means for securing the testimony of one who has "claimed his privilege against self-incrimination" in a grand jury or court proceeding (Section 1406, *supra*, pp. 2–3). It is particularly designed to secure, when deemed necessary in the public interest, the testimony of those who may, themselves, be implicated in crime.

ARGUMENT

I. PETITIONER UNDERSTOOD THE REQUIREMENTS WHICH FLOWED FROM THE GRANT OF IMMUNITY AND THE DIRECTION TO TESTIFY

We turn, first, to the question whether the record in this case provides any basis for a claim that petitioner failed to understand the order which he was charged with disobeying.

A. Petitioner suggests that there was confusion as to which questions he was being directed to answer, or could be required to answer pursuant to the order granting immunity. This claim, we believe, is specious.

To be sure, when petitioner first appeared (on August 10, 1959) before the grand jury, the prosecutor was of the view that petitioner could not validly claim the Fifth Amendment privilege in relation to transactions for which he had already been convicted. But the prosecution did not thereafter seek an order directing petitioner to answer those particular questions. Anxious to question petitioner concerning many aspects of the narcotics traffic, the prosecutor, instead of attempting to segregate a few questions as to which, arguably, no claim of privilege would attach, chose to apply for an order granting the petitioner a broad immunity in respect of the entire matter under investigation by the grand jury. This course was hardly surprising. One of the purposes of immunity statutes, from the beginning, has been "to forestall the obstruction and delay incident to judicial determination of the validity of the witness'

claim * * *." *United States* v. *Monia*, 317 U.S. 424, 428.

It is also true that the District Judge, when the matter came to his attention, expressed doubt whether petitioner had a valid claim of privilege in relation to all of the questions which had been put to him. The judge did not, however, proceed to rule upon this matter or to direct that certain questions be answered. Any issue as to whether the privilege was available in relation to particular questions disappeared from the case when the prosecutor advised the court that he was seeking the judge's approval of an application to confer immunity upon petitioner. Once immunity was granted, there was no necessity to decide whether the earlier claim of privilege had been properly asserted in all instances.

B. The significant consideration, for present purposes, is that the grant of immunity and the accompanying order to testify placed petitioner in an unmistakably plain position—that of being required to answer all of the questions propounded by the grand jury. He could have had no doubt on this score.

In granting immunity on August 13, 1959, the District Judge explicitly stated (R. 16), "this Court now grants you immunity from prosecution which might arise from any answers that you give to this Grand Jury concerning the matter of their investigation." The court continued (*ibid.*), "It * * * is no longer necessary for you to invoke the protection of the Fifth Amendment to protect yourself from incrimination or subsequent prosecution, because pursuant to the

provisions of the Narcotic Control Act, I now grant you immunity from such prosecution and direct you to answer the questions propounded to you by the Grand Jury." Petitioner was asked if he understood, and he replied affirmatively (*ibid.*). The court then advised petitioner that, if he failed to abide by the order upon the resumption of the grand jury proceedings, he would be subject to punishment for contempt. In light of this colloquy, there can be no doubt that petitioner was plainly informed that he was being granted full immunity in relation to the matters under investigation by the grand jury, and that there was no further basis for any fear of incrimination or basis for any further claim of privilege.

The court also arranged for petitioner to see his lawyer prior to resumption of the grand jury proceedings. If any confusion persisted after the hearing of August 13, 1959—and the record affords no basis whatever for this supposition—the matter could have been clarified at that juncture. But no claim of confusion was made or brought to the attention of the District Judge. Counsel sought no further audience.

C. When petitioner, upon his reappearance before the grand jury, persisted in his refusal to testify, the District Court issued an order to show cause why he should not be held in criminal contempt. At the hearing which followed (on August 18, 1959), petitioner was represented by his counsel. His counsel claimed that petitioner's statements before the grand jury had not been kept secret. He argued, also, that the real reason for petitioner's reluctance to testify was that

he was fearful of his safety and of his family's safety. These contentions, upon which the District Court ruled, have not been renewed on appeal.

Conversely, none of the questions which are urged in this Court were presented to the District Court. The claim of confusion was not even remotely suggested. Certainly, this was not the result of any unwillingness on the part of the District Court to hear full argument. As the Court of Appeals observed (R. 52), "Judge Campbell was very patient * * *." Moreover, the District Judge, at the conclusion of the contempt hearing, immediately before he imposed sentence, again afforded petitioner an opportunity to go before the grand jury and to testify. Still, petitioner advanced no suggestion that he did not understand what he would have to do in order to comply with the court's order. Petitioner simply declined.

Thus, even if one could credit the claim that petitioner was confused at the August 13 hearing when he was first ordered to testify, there can be no satisfactory explanation of the fact that, at the contempt hearing on August 18, petitioner and his counsel failed to make any claim of confusion, to seek further instructions, or to take advantage of the proffered opportunity to purge the contempt.

One may go further. The reason which was offered by petitioner as the explanation for his refusal—his alleged fear of underworld reprisal if he testified freely—negates the belated suggestion that he had doubts as to the meaning of the court's order directing him to testify.

D. Although petitioner does not argue the point in this Court, it may be appropriate to note that the claim advanced in the District Court, *i.e.*, that petitioner should not be required to testify because of his fear of reprisals, is one which never has been considered a legal excuse. A witness's claim that he fears reprisal is seldom susceptible of proof or disproof, and the acceptance of such claims would invite widespread recalcitrance. There is an even more important reason for rejecting the argument. Courts of law can function effectively only so long as they are unhampered in the pursuit of truth. Above all, they cannot bow to the threats of the lawless. This is not to deny the government's obligation to consider the safety of its citizens and to furnish them protection when necessary. It is to assert, rather, that the obligation to protect the safety of the citizen cannot properly be fulfilled by a sacrifice of the law's processes. The duty of the citizen to aid in the enforcement of the law by giving testimony must be preserved intact. See *Brown* v. *Walker*, 161 U.S. 591, 600; *United States* v. *Monia*, 317 U.S. 424, 432 (dissenting opinion). That is vital to the safety of all citizens.[*]

[*] It should be noted that, if petitioner was excused from testifying under the grant of immunity because of fears for his safety, all witnesses summoned to testify—whether under an immunity statute or as an ordinary witness at a judicial proceeding—would be similarly excused. The claim that personal fear excuses a witness from refusing to testifying is not, and cannot be, restricted to persons called under an immunity statute.

II. THERE WERE NO TECHNICAL DEFECTS IN THE GRANT OF IMMUNITY

A. Petitioner complains (Br. 18) that the District Court, in explaining the immunity to petitioner, used the words "this court now grants you immunity" and "I now grant you immunity." The contention that this invalidated the grant of immunity is frivolous. To be sure, it is the statute itself which confers the immunity, conditional upon testifying, once the application has been presented and approved. This hardly signifies that the manner in which the judge explained the ruling to petitioner—in terms calculated to be intelligible to him—was misleading or prejudicial. The record is barren of even a suggestion that there was any confusion. If petitioner's lawyer had questioned the phraseology, or had asked for clarification, the judge would undoubtedly have phrased his remarks in a more formal manner, *i.e.*, that petitioner was being given immunity under the statute. No objection was made. And, since the government's application under the statute had in fact been granted, the explanation by the judge did not alter the legal effect of the action taken. The nub of the matter is that petitioner had been granted immunity, as he well knew.

B. Petitioner's suggestion that questions concerning marihuana fall outside the immunity statute (Br. 12) is without merit. Section 1406, *supra*, pp. 2–3, provides immunity as to the testimony of any witness involving "any violation of—(1) * * * part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 * * *" Part II is entitled "marihuana" (26 U.S.C. 4741 *et seq.*) and is devoted exclusively to

marihuana. Also, immunity is granted in respect of "any violation of—* * * (3) the Act of July 11, 1941, as amended". This in turn refers to "any substance" taxed under subchapter A of chapter 39, which includes marihuana (21 U.S.C. 184a(b)). Thus, violations involving marihuana are plainly covered by the immunity provision of the Narcotic Control Act of 1956.

C. Petitioner argues that there was a lack of supporting findings in the court's order granting immunity and that it does not affirmatively appear that the written order of August 13, 1959 (confirming the order of the same date orally announced in open court) was seen by petitioner.[3]

There is no requirement that an order directing a witness to testify be in writing. If there is no defect in the order announced in open court, it is immaterial whether petitioner actually saw the written order, which simply confirmed the court's order as orally announced.

D. Petitioner's contention as to "findings" is without substance. Under the statute, the District Court has no occasion to determine whether a grant of immunity is in the public interest; the judge's role is confined to a determination whether the application is in proper form. *Ullmann* v. *United States*, 350 U.S. 422, 432–434. After Judge Campbell had read the application submitted by the prosecutor, had examined the grand jury transcript, and had heard counsel, he stated (R.

[3] Reference to the oral and written orders (compare R. 12–13 with R. 16) shows that there was no significant variation between the two.

16), "I find the petition in proper form. The same is granted." No further finding is required,[4] and the only relevant inquiry is whether the application did in fact meet the formal statutory requirements. The application is before the Court (R. 9–12) and petitioner does not contend that it fails in any respect to meet the statutory requirements.

III. THE INDICTMENT OF PETITIONER FOR NARCOTICS VIOLATIONS DOES NOT RETROSPECTIVELY RELIEVE HIM OF HIS LIABILITY FOR CONTEMPT

We consider, finally, petitioner's suggestion that his indictment by the grand jury for a violation of the narcotics laws somehow served to purge his earlier contempt.

A. Under the immunity provision of the Narcotic Control Act (as well as under other immunity statutes), one acquires immunity by testifying, not by refusing to testify. The statute affords protection in respect of "any transaction, matter, or thing concerning which [the witness] is compelled * * * to testify or produce evidence", and it also covers the "testimony so compelled." Since petitioner refused to testify, he did not meet the condition upon which immunity is granted. Had he first refused to comply with the court's order and later undertaken to do so, his testimony would have become a bar to indictment, but it still would not have excused a prior contempt.

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[4] *Corona* v. *United States*, 250 F. 2d 578 (C.A. 6), cited by petitioner, stands only for the proposition that the District Court is to determine whether the application meets the statutory requirements. As observed in the text, that determination was made in the instant case.

In other words, the government is not put to an election until the testimony is given.

B. Even if the statute could be read to leave room for the argument that an order directing a witness to testify confers an immediate and irrevocable immunity even though the witness refuses to testify, the most that could be contended is that the witness thereby obained immunity from prosecution for those transactions in relation to which he was directed to testify. If the government were thus held to have made an election when the order to testify was entered, it was obviously an election to proceed down the road of securing the testimony and punishing any defiance as contempt.[5] Thus the petitioner can at most use the order as a plea in bar of the indictment. The indictment affords no basis for contending that he is to be relieved from the consequences, *i.e.*, punishment for contempt, which flow from his refusal to do the very thing which prompted the grant of immunity.[6]

C. Petitioner says that he was a *de facto* defendant when called by the grand jury and that this is confirmed by the fact that he was ultimately indicted. He also suggests that putative defendants have an "absolute" privilege not to testify. From these contentions, he would apparently draw the conclusion that he could not be required to testify pursuant to

---

[5] Note that the statute specifically provides (*supra*, p. 3): "No witness shall be exempt under this section from prosecution for perjury or contempt while giving testimony or producing evidence under compulsion as provided in this section."

[6] Although we believe that petitioner does not have a valid plea in bar of the indictment, we recognize, of course, that in the event petitioner is convicted under the indictment, the sentencing court, in imposing punishment, may take into account the sentence which has been imposed for the contempt.

a grant of immunity. There are several defects in this argument.

To begin with, so far as this record shows, petitioner was not a primary target of the grand jury's inquiry when he was called. It does not appear that the purpose was to induce him to incriminate himself, rather than to secure information in relation to other persons.

Moreover, those cases which raise a question as to the propriety of calling before a grand jury the person against whom an indictment is sought have no application here for a further reason. The source of concern in cases of that type is that the person called may have been unaware of his rights and may have been improperly induced to accuse himself out of his own mouth.[7] The instant case, however, is one in which petitioner, upon being called, refused to testify before the grand jury. Manifestly, he sacrificed none of his rights, and the indictment, even if it were now before the Court, could not be deemed tainted by overreaching on the part of the prosecutor.

In all events, a suggestion that putative defendants should be accorded special safeguards in relation to grand jury inquiries can have no proper application to a contempt case in which immunity is tendered and the order to testify is thereupon disobeyed. The stat-

[7] For a full discussion of those cases, see the majority and concurring opinions in *United States* v. *Scully*, 225 F. 2d 113 (C.A. 2). The government's views on this issue were elaborated in its brief in *Halperin* v. *United States*, Oct. Term, 1956, No. 184, pp. 90–97. This Court found it unnecessary to reach the point in that case, decided *sub nomine Grunewald* v. *United States*, 353 U.S. 391.

ute explicitly assumes that there is or may be a valid claim of privilege (Section 1406, *supra*, pp. 2–3, becomes operative after the witness has "claimed his privilege against self-incrimination" in a "case or proceeding before [a] grand jury or court of the United States"), and on that assumption provides procedures by which a comprehensive immunity may be substituted for the privilege to the end that the public may obtain the benefit of testimony which would otherwise be withheld. If immunity procedures could not be invoked in the case of one who may himself be implicated in crime and may accordingly be a potential or a possible defendant, the statute would be set virtually at naught. In short, we agree that petitioner had grounds for asserting privilege in the first instance, but believe that this cannot detract from the conclusion that he had no privilege after immunity from prosecution was granted under Section 1406. Indeed, his is the very type of case at which the statute is directed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

ARCHIBALD COX,
Solicitor General.
WILLIAM E. FOLEY,
Acting Assistant Attorney General.
BEATRICE ROSENBERG,
THEODORE GEORGE GILINSKY,
Attorneys.

FEBRUARY 1961.

U. S. GOVERNMENT PRINTING OFFICE 1961

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 122

ARMANDO PIEMONTE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Reply Brief of Appellant

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SUPPLEMENTARY STATEMENT OF FACTS.

The facts presented by the par... how the relevant affirmative facts of record. But any inference that the trial court's written order of August 13, 1959, was seen by petitioner prior to his final appearance before the grand jury is not justified by those facts of record.

REPLY TO GOVERNMENT'S FIRST POINT:

The government contends the grant of immunity was sufficiently clear that the petitioner could not have failed to understand what was required of him.

At the same time, the government does not question our assertions that petitioner was in custody (R. 4); that the prosecutor was aware of the identity of appellant's lawyer (R. 5), and that the lawyer was not notified that appellant would be brought before the court for immunity processing (App. Br. 4). The government's assurance in this Court that all necessary clarification was extended to the petitioner, is hardly a substitute for effective assistance of counsel in the trial court.

The government concedes a substantial area of uncertainty in the trial court as to whether or not petitioner could properly refuse to testify (and therefore, could properly be immunized) on matters relating to the heroin involved in his earlier conviction (Govt. Br. 8, 13). But the government claims there was nothing for the petitioner to worry about. The situation was rectified when ". . . the prosecutor decided, in the interest of obtaining all the petitioner's testimony, to present an application [granting immunity as to everything]." (Govt. Br. 9).

But neither trial judge nor appellant could have understood the prosecutor to have been so motivated. For the trial court was informed by the prosecutor, not of a "decision" to sacrifice law to expediency, but rather, in the prosecutor's words:

> "Based upon some recent decisions of the Appellate Court, so that the Court would not have any misconception of the idea of the Government counsel on this matter, we, too, think that the constitutional privilege claimed by the witness is well taken in [the matter of the heroin involved in his conviction]. (R. 14).

What the government really means is that the prosecutor "decided, in the interest of obtaining all of petitioner's testimony," to skirt the outer edges of the statute, circumvent orderly procedure, and disregard totally the rights of the petitioner.

* * * * *

The government further urges that the trial court was so patient with appellant as to give him every chance to avoid a sentence for contempt. But the point is not how patient the judge was, but whether petitioner was *guilty* of contempt. And this, in turn, depends upon whether or not the proceedings were characterized by such procedural regularity, that violation of the order to testify gave grounds for petitioner's imprisonment. The government persists in attempting to discuss the issue in terms of whether the petitioner was given ample opportunity to comply with the Court's order. Obviously, however, such an approach is meaningless, unless the order had a firm basis in law.

REPLY TO GOVERNMENT'S SECOND POINT:

We have urged the proposition that the trial court's oral order was legally ineffective to grant immunity, and that the written order does not afford a basis for contempt because it was not brought to petitioner's notice.

The government responds: the oral order was superfluous (Govt. Br. 18) while the written order, on the other hand, was unnecessary (Govt. Br. 19).

The government provides this Court an impressive list of the things that are unnecessary, according to the government, to the energizing of the immunity statute.

The government urges:

That the witness need not be represented by counsel when the coercive order is entered.

That it is not necessary that the order be clear, because if there is confusion, "petitioner's *lawyer* [can] question . . . the phraseology, or ask . . . for clarification." (Govt. Br. 18).

That it is not necessary that the trial court's oral order be precise, because the subsequent written order covers the subject and is controlling (Govt. Brief in opposition to petition for certiorari, p. 9).

That it is not necessary that the written order contain the findings required by the statute, because the oral order takes care of the matter (Govt. Br. 19.) Besides, the oral order was merely an "informal explanation to petitioner" (Brief in opposition to petition for certiorari, p. 8), and the written order was totally unnecessary (Govt. Br. 19).

The government concludes that it is "immaterial whether petitioner actually saw the written order, which simply confirmed the court's order as orally announced," (Govt. Br. 19); and the oral order was merely the instrumentality whereby "the judge explained the ruling to petitioner—in terms calculated to be intelligible to him . . ." (Govt. Br. 18).

Besides, says the government, the petitioner was inconsistent.

* * * * *

The government further urges that we were in error in suggesting that immunity cannot result from answers given to questions concerning dealings in marihuana. The government points out, correctly, that 18 U. S. C. 1406 authorizes a grant of immunity where a grand jury or court is investigating violation of certain statutes relating to marihuana.

Although the issue is but tangential to this case, we do not feel that the statutes support the government's argument on this point. Subsection (h) of Section 2 of the Narcotic Drugs Import and Export Act (21 U.S.C. 176a) provides that proof of possession of marihuana is sufficient to authorize conviction for smuggling marihuana. The statute also provides that "notwithstanding *any other* provision of law", violators of the statute shall be imprisoned for five years. (Emphasis supplied).

This section was enacted contemporaneously with 18 U. S. C. 1406. Giving expression to the presumed legislative intent that both sections be given effect, and in view of the command contained within 21 U. S. C. 176a that its penalties shall be imposed "notwithstanding any other provision of law", it is difficult to see how 18 U.S.C. 1406 can grant immunity from prosecution under 21 U. S. C. 176a. Whatever may have been the true Congressional intent, the language used could not be more clear.

REPLY TO GOVERNMENT'S THIRD POINT.

The government has evaded, not answered our contentions that appellant's indictment relieved him of liability for penalties for failure to testify before the grand jury which returned the indictment.

We contend that under no circumstances may a witness be punished for refusing to testify before the grand jury which ultimately indicts him.

The government answers that petitioner did not testify; therefore, he acquired no immunity; therefore, it was proper for the grand jury to indict him.

But we did not claim that petitioner was improperly *indicted*. Obviously no such contention is tenable within the limits of this proceeding. The issue is not present in this case, and the point has not been urged.

The issue is rather: May a witness be punished for refusal to testify before the grand jury which ultimately indicts him?

If no immunity statute had ever been enacted; and if the petitioner had not claimed self-incrimination, but had merely stood mute; then, the issue would be exactly the same as that here presented.

As our original brief demonstrated, without contradiction by the government, grand jury proceedings are a part of a criminal case against those indicted in those proceedings. And a defendant in a criminal case need not claim self-incrimination as grounds for refusal to testify. He need only refuse to testify, or remain silent. His right to do so is absolute. It is unaffected by any assigned grounds or lack thereof.

The government suggest that "there are several defects in this argument." (Govt. Br. 22). But the government does not suggest what those defects might be. Instead, the government lauds the concept of a statute which would compel the testimony of a defendant in a criminal case against himself—"Indeed, his is the very type of case at which the statute is directed." (Govt. Bf. 23). There are, to be mild, several defects in *that* argument, not the least of which is that the statute does not pretend to require a defendant in a criminal case to become a witness therein.

In this aspect, the police and prosecutive agencies stand where they have always stood. They may not at once prosecute a citizen for a substantive offense, and punish him for his refusal to cooperate in that prosecution. Save a few significant exceptions (*cf. Powell* v. *United States*, D.C. Cir. 1955, 226 F 2d 269, 274 no serious attempt to do it has been made, and such attempts as have been made have been rebuffed by the courts. See, *e.g.*, *United States* v. *Lawn*, D.C.N.Y. 1953, 115 F. Supp. 674, 677.

CONCLUSION.

For the reasons expressed in our various pleadings in this Court, we pray that the judgment be reversed.

Respectfully submitted,

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77 W. Washington Street
Chicago 2, Illinois
Attorneys for Appellant.

No. 122

In the Supreme Court of the United States

OCTOBER TERM, 1960

ARMANDO PIEMONTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

ARCHIBALD COX,
Solicitor General,
Department of Justice, Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 122

ARMANDO PIEMONTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

In accord with Rule 41–5 of the Rules of the Supreme Court of the United States, the government files this supplement to its brief to note an intervening matter that was not available when the brief in chief was filed.

At the petitioner's trial on the indictment which was returned subsequent to the contempt in the case at bar (R. 43–48), the government moved to dismiss as to petitioner when its witness was unable to identify the petitioner in the court room. The judge granted the motion on March 1, 1961. See the transcript appended.[1]

[1] A certified copy of the material printed in the appendix is being filed with the Clerk of this Court.

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By bringing this to the attention of the Court, we do not concede its relevancy to the contempt case, any more than the relevancy of the indictment itself, but note it merely to afford the Court complete factual information.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

MARCH, 1961

APPENDIX

Partial Transcript of Proceedings in the United States District Court for the Northern District of Illinois, Eastern Division

No. 59 CR 466 and other consolidated cases: Nos. 59 CR 467, 59 CR 468, 59 CR 470

UNITED STATES OF AMERICA vs. SHELDON R. TELLER, ET AL., DEFENDANTS

Before Judge Perry and a Jury, Wednesday, March 1, 1961, 2:00 o'clock p.m.

Trial resumed pursuant to recess.

PRESENT: Same as before, except that Mr. Cooper was absent.

(The following proceedings were had out of the presence and hearing of the jury:)

The CLERK. 59 CR 466 and consolidated cases, United States v. Teller, et al., on trial.

The COURT. All right, all defendants are now present and all counsel.

You may proceed.

The Government has a motion?

Mr. CONNELLY. Yes, your Honor.

At this time, in view of the testimony of this witness and his inability to identify the person Frank, I must point out that prior to this time a photograph had been identified of this person Frank as the defendant Armando Piemonte, but since he has said he couldn't be definite and is unable to identify him at this time, the Government feels that it certainly

cannot prove beyond a reasonable doubt that this particular defendant was involved, and we can't identify him, so that we move at this time to dismiss this indictment as to Armando Piemonte.

Mr. GANNON. I have no objection.

The COURT. I would be surprised if you did. In fact, I wouldn't be able to understand.

Mr. GANNON. Your Honor, may I speak off the record?

The COURT. Yes.

(Discussion off the record.)

Mr. CONNELLY. May we have the defendant Piemonte leave the court room?

The COURT. Yes. And I think I should explain to the jury what it is.

Mr. CONNELLY. Yes, I think so, your Honor.

The COURT. I always believe in not leaving the jury to guess.

Mr. CONNELLY. I don't recall hearing your Honor say the motion was granted.

The COURT. I did say the motion is granted.

Mr. CONNELLY. I see.

The COURT. The motion is granted and the defendant discharged and the case dismissed as to that defendant.

All right. You may proceed.

* * * * *

No. 59 CR 466 and other consolidated cases: Nos. 59 CR 467, 59 CR 468, 59 CR 470

UNITED STATES OF AMERICA *vs.* SHELDON R. TELLER, ET AL., DEFENDANTS

I, Edward Newlander, do hereby certify that the foregoing is a true and accurate transcript of the first portion of the proceedings had in the trial of the

above-entitled and numbered cases before HON. J. SAM PERRY, one of the judges of said court, and a jury, in his courtroom in the United States Court House, Chicago, Illinois, on the afternoon of Wednesday, March 1, 1961.

/s/ EDWARD NEWLANDER,
Official Court Reporter,
United States District Court,
Northern District of Illinois.

MARCH 3, 1961.

U.S. GOVERNMENT PRINTING OFFICE, 1961

SUPREME COURT OF THE UNITED STATES

No. 122.—October Term, 1960.

Armando Piemonte, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June 19, 1961.]

Mr. Justice Frankfurter delivered the opinion of the Court.

Petitioner, Armando Piemonte, while serving a six-year sentence for the sale and possession of heroin, was brought by writ of habeas corpus *ad testificandum* before a federal grand jury inquiring into narcotics offenses. Having consulted his counsel prior to his appearance, before the grand jury he refused to answer all questions concerning his crime as well as other transactions in narcotics, under the claim of his privilege against self-incrimination. Three days later, the United States Attorney petitioned for an order directing Piemonte to answer the questions put to him. The petition stated that the grand jury was conducting an investigation of illegal narcotics activities, that Piemonte's testimony was required for the investigation in the public interest, that having been questioned on matters relating to narcotics Piemonte claimed his privilege against self-incrimination, wherefore request was made that Piemonte be required to testify pursuant to 18 U. S. C. § 1406. That provision of the Narcotic Control Act of 1956 gives immunity from future prosecution for any witness who is compelled by court order to testify before a federal court or grand jury concerning violations of the narcotics laws.[1]

[1] "Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or

The section's breadth and constitutionality were considered earlier this Term in *Reina* v. *United States*, 364 U. S. 507.

The district judge, having granted Piemonte immunity from "prosecution which might arise from any answers that you give to this Grand Jury concerning the matter of their investigation," ordered him to testify "relative to the aforementioned inquiry of said Grand Jury . . . ." Piemonte was granted an opportunity to consult his lawyer and his duty to appear before the grand jury was delayed for a day. The next morning he renewed his refusal to answer the questions propounded to him about

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other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any violation of—

"(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

"(2) subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U. S. C., sec. 174), or

"(3) the Act of July 11, 1941, as amended (21 U. S. C., sec. 184a),

is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in the next sentence) against him in any court. No witness shall be exempt under this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section."

narcotics activities and again invoked his Fifth Amendment privilege.

That afternoon he was taken back before the District Court to answer an order to show cause why he should not be cited for contempt for deliberately disobeying the previous order to testify. He was represented by his counsel at this proceeding. Having examined the transcript of the grand jury's morning proceedings, the judge asked petitioner if he persisted in refusing to answer the questions, to which Piemonte replied in the affirmative. The judge gave Piemonte's counsel four days to prepare for a plenary hearing of the charge of contumacy, but denied Piemonte's motion for a jury trial.

At the subsequent hearing, the Government stood on its case based on the grand jury transcripts and the court's order to testify. The judge again asked Piemonte if he persisted in his refusal to obey the court's order. Piemonte took the stand in his own behalf, and made the following explanation for his refusal to testify:

> "Well, I am doing time in the penitentiary. I fear for my life. I fear for the life of my wife, my two stepchildren, and my family. I can't do something like that. I want to live, too."

After his counsel's elaboration of this argument, the judge again asked Piemonte if he would testify. Upon his refusal, the judge declared him guilty of contempt of court for willful failure to obey a lawful order. After hearing argument on the sentence, the judge once again offered to give petitioner the opportunity to answer the questions. The refusal having been made definitive, sentence was fixed at eighteen months, to commence at the termination of the imprisonment he was serving.

The contempt judgment was affirmed by the Court of Appeals for the Seventh Circuit, 276 F. 2d 148, and we granted certiorari, 364 U. S. 811.

This record surely evinces the utmost solicitude by the trial court for the defendant's interests. His only claim for reversal here is based upon alleged defects in the proceedings which resulted in his conviction for criminal contempt.[2]

Petitioner's first claim is that he was subjected to so many differing interpretations of whether he had a privilege to refrain from testifying as to certain questions that the order commanding him to answer lacked sufficient clarity. This is a sheer afterthought. Neither Piemonte nor his counsel ever claimed confusion in the District Court as a basis for his refusal to testify. Nor do the facts reveal that petitioner could have been misled by the out-of-context statements he pieces together for purposes of review.

The first morning before the grand jury, the government attorney asked petitioner:

> "Didn't your lawyer advise you, Mr. Piemonte, on those matters that you pleaded guilty to in the indictment that you have no Constitutional privilege against self-incrimination?"

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[2] Neither before the Court of Appeals nor here was fear for himself or his family urged by Piemonte as a valid excuse from testifying. Nor would this be a legal excuse. Every citizen of course owes to his society the duty of giving testimony to aid in the enforcement of the law. See *Brown* v. *Walker*, 161 U. S. 591, 600. Lord Chancellor Hardwicke's pithy phrase cannot be too often recalled: "[T]he public has a right to every man's evidence." 12 Hansard's Debates 693; 8 Wigmore, Evidence (3d ed.), p. 64, § 2192.

If two persons witness an offense—one being an innocent bystander and the other an accomplice who is thereafter imprisoned for his participation—the latter has no more right to keep silent than the former. The Government of course has an obligation to protect its citizens from harm. But fear of reprisal offers an immunized prisoner no more dispensation from testifying than it does any innocent bystander without a record.

However, the Government, in order to avoid any argumentative opportunities as to the scope of the area for which it sought immunity, did not attempt to secure an order directing answers for the particular questions relating to matters involved in his former conviction. It requested a broad order of immunity to cover the entire scope of what was under investigation by the grand jury. The United States Attorney told the district judge in seeking the order compelling testimony:

> "[S]o that the Court would not have any misconception of the idea of the Government counsel on this matter, we, too, think that the constitutional privilege claimed by the witness is well taken in this matter."

Petitioner plainly must have known—and gave every indication that he knew—that he was required to answer all questions put to him by the grand jury in return for equivalent, compensating immunity. We find no merit in an argument which is contradicted by petitioner's own assertion, supported by his counsel's argument, that he refused to testify solely because of fear.

Secondly, petitioner argues that the oral grant of immunity by the district judge was null and void, because the judge said "this Court now grants you immunity from prosecution . . ." and "I now grant you immunity from such prosecution . . . ." when in reality the statute, not the court, grants the immunity. The puerility of this contention is emphasized by petitioner's disregard of the judge's introductory basis of his pronouncement as "in accordance with the provisions of the Narcotic Control Act."

The remaining contentions of petitioner are of even less substantiality, and accordingly the judgment below is

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 122.—October Term, 1960.

Armando Piemonte, Petitioner, v. United States. | On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June 19, 1961.]

Mr. Chief Justice Warren, with whom Mr. Justice Douglas concurs, dissenting.

This case represents another long step in the constantly expanding use by the federal district judges of their summary contempt power to mete out severe prison sentences without according the defendants the benefit of a jury trial and the other rights guaranteed by the Fifth and Sixth Amendments.[1] In an ordinary case of this nature, I would content myself with saying that the conviction should be reversed on the ground that a federal district judge has no power to impose such punishment in a summary proceeding. See *Green* v. *United States*, 356 U. S. 165, 193 (dissenting opinion); *Reina* v. *United States*,

[1] Only in the last few years has it become the fashion for district judges to use the summary contempt power as a device for imposing long terms of imprisonment. See, *e. g.*, *Reina* v. *United States*, 364 U. S. 507 (two years' imprisonment); *Brown* v. *United States*, 359 U. S. 41 (fifteen months' imprisonment); *Green* v. *United States*, 356 U. S. 165 (three years' imprisonment); *Collins* v. *United States*, 269 F. 2d 745 (three years' imprisonment); *Tedesco* v. *United States*, 255 F. 2d 35 (two years' imprisonment); *Corona* v. *United States*, 250 F. 2d 578 (two years' imprisonment). Prior to this recent trend, the summary contempt power was seldom used to impose more than a nominal fine or a short term of imprisonment. See *Brown* v. *United States*, *supra*, at 58–59 (dissenting opinion).

364 U. S. 507, 515 (dissenting opinion). However, the facts of this case are so disquieting that I am compelled to add a few additional comments.

In 1958, the petitioner was convicted of selling and possessing narcotics in violation of the federal narcotics laws and was sentenced by a Federal District Court to six years' imprisonment. In 1959, while serving his sentence at the Leavenworth Penitentiary, the petitioner was subpoenaed to testify before a federal grand jury conducting an investigation of possible narcotics offenses. He was asked to indicate where he had obtained the narcotics which he was convicted of having possessed and sold. Invoking his Fifth Amendment privilege against self-incrimination, the petitioner refused to answer the question.[2] He was then asked whether he knew several named individuals and whether he had obtained the narcotics from any of those individuals. Still relying upon his Fifth Amendment privilege, the petitioner refused to answer each of the questions. On petition of the Government, the District Court authorized the granting of immunity to the petitioner pursuant to 18 U. S. C. § 1406 and instructed him to answer the questions asked by the grand jury. Upon being recalled before the grand jury, the petitioner again invoked the Fifth Amend-

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[2] "Q. You are now incarcerated in the penitentiary, are you not, Mr. Piemonte?

"A. That's right.

"Q. Which one?

"A. Leavenworth Penitentiary.

"Q. You are serving a term of six years?

"A. Six years.

"Q. And that is for the sale and possession of heroin?

"A. Yes, sir.

"Q. Mr. Piemonte, that sale and possession of heroin, there were two sales, were there not, one ounce and 95 grains of heroin that you sold for $3100.00, and another sale—the first one was on November 23, 1957, and the sec[fol. 5]ond one was on November 27, 1957, when

ment and refused to identify those from whom he had obtained the narcotics which constituted the basis for his 1958 conviction.[3] In response to a subsequent order to show cause why he should not be held in contempt of court, the petitioner asserted, as an additional reason for not answering, that the lives of his wife and children, as well as his own life, would be endangered were he to answer the questions. Having denied the petitioner's request for a jury trial, the district judge summarily found the petitioner guilty of contempt of court and sentenced him to eighteen months' imprisonment, to be served after the completion of the six-year sentence imposed in 1958.

In my opinion, the Government has subjected the petitioner to unjustifiable harassment. The petitioner has

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you sold eight ounces 354 grains for $3,000.00 to Agent Davis; those were the charges in the indictment?

"A. Right.

"Q. Now, Mr. Piemonte, our information is that you were in the narcotic business—Strike that question.

"These two sales of heroin, the first one for $3100.00, and the second one for $3,000.00, on November 23, 1957, and November 27, 1957, will you tell the Grand Jury, please, where you got the heroin?

"A. Sir, I am taking the 5th Amendment. I decline to answer any questions under the Constitution, the 5th Amendment."

"Q. Now I am going to go over some of those questions that you claimed your privilege on and repeat them to you.

"Now you were convicted in the Federal Court here in Chicago for the sale of heroin on November 23, 1957 that you got $3100 for and another sale on the 27th day of November 1957 that you got $3,000 for.

"Now those were the two sales upon which you were convicted and sentenced to the penitentiary at Leavenworth, is that right?

"A. Right.

"Q. Now the question:

"These two sales of heroin, the first one for $3100 and the second one for $3,000 on November 23, 1957 and November 27, 1957, will you tell the Grand Jury, please, where you got that heroin?

"A. I stand on the Fifth Amendment. I decline to answer as it may tend to incriminate me."

been convicted for his admittedly illegal conduct and is presently paying his debt to society for that conduct. However, not being satisfied with this punishment, the Government sought to extract from the petitioner, under the threat of a contempt conviction, testimony which it could not have compelled at the original trial in 1958, and which it knows might well endanger petitioner's life and the lives of his loved ones. In my view, the Government's attempt to compel the petitioner to testify about conduct for which he has already been punished, and the District Court's imposition of an additional term in the penitentiary for petitioner's refusal to testify about such conduct represents the type of harassment which violates the spirit of the Double Jeopardy Clause of the Fifth Amendment. Cf. *Abbate* v. *United States*, 359 U. S. 187, 196 (separate opinion of MR. JUSTICE BRENNAN); *Ciucci* v. *Illinois*, 356 U. S. 571, 573 (dissenting opinion). I think it can fairly be said that the treatment which the petitioner has received from the Government and the District Court falls far short of that fundamental fairness which the Constitution guarantees and to which even the basest prisoner in the penitentiary is entitled.[4] Therefore, even if the Court is unwilling to recognize that the Constitution prohibits the imposition of punishment in a summary proceeding, it ought to exercise its supervisory power over the lower federal courts to rectify the abuse of the summary contempt power which the record in this case makes manifest. See *Offutt* v. *United States*, 348 U. S. 11.

[4] I do not mean to imply that a person who is incarcerated may, for that reason alone, be excused from testifying before a grand jury. However, I do believe that he cannot be compelled to testify concerning the illegal activity for which he has been incarcerated.

SUPREME COURT OF THE UNITED STATES

No. 122.—October Term, 1960.

Armando Piemonte, Petitioner, v. United States.	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June 19, 1961.]

Mr. Justice Douglas, with whom Mr. Justice Black concurs, dissenting.

Petitioner, while a prisoner in a federal penitentiary serving a six-year sentence on a narcotics conviction, was summoned before a grand jury and interrogated about transactions in narcotics.

I.

One series of questions was opened with the following: "Mr. Piemonte, were you in the narcotics business in 1954?" Following the tender of immunity, petitioner was again asked a series of questions, some of them relating to transactions in narcotics in that year. Among the questions was the following: "Have you supplied Jeremiah Pullings with any heroin?"

These questions and these refusals to answer were on August 10 and 14, 1959. The sentence for contempt was imposed on August 18, 1959. After that date and before February 29, 1960, the date when the Court of Appeals affirmed the appeal, the grand jury returned another indictment against petitioner. This was on September 2, 1959. This indictment charged petitioner and others with a conspiracy to buy and sell narcotics commencing in August 1954. One of the overt acts charged was a conversation in 1955 between Jeremiah Pullings and one of petitioner's co-conspirators under the September 2,

1959, indictment. These 1954 and 1955 transactions, for which petitioner now stands indicted, were ones on which he refused to testify and for which he has been committed for contempt.

Once an indictment was returned, the proceedings of this grand jury became a part of a criminal prosecution directed against petitioner. *Counselman* v. *Hitchcock*, 142 U. S. 547, 562; *United States* v. *Monia*, 317 U. S. 424, 427. When the citizen is formally accused by indictment, he has a constitutional right to stand mute and to refuse to testify. His right not to take the stand in a federal criminal trial transcends his privilege against self-incrimination. No immunity statute, no pressure of government, no threats of the prosecution can be used to deprive the citizen of this right. See *Wilson* v. *United States*, 149 U. S. 60; *Stewart* v. *United States*, 366 U. S. 1. And it is unthinkable that a district judge would ever hold a defendant in contempt because he refused to take the stand at his own trial. The district judge did no such thing here. But that was the posture of the case when it was decided by the Court of Appeals. For by then the matters about which petitioner refused to answer had become in form and in effect an indictment against him.

There is no power in our free society to compel a person to talk about a matter on which he has been indicted or to penalize him for failure to do so. We might as well say that an accused can be committed for contempt for failure to take the stand at his own trial.

We are advised that after we granted certiorari the indictment against petitioner was dismissed on motion of the Government for lack of evidence. That seems irrelevant. The truth is that the grand jury before which petitioner was summoned did indict him. Petitioner was in fact held in contempt for refusal to testify in a crim-

inal proceeding against him. That is not permissible under the procedures of our free society whatever may have been the ultimate fate of that criminal proceeding.

II.

I think the imposition of an eighteen months' sentence was beyond the power of a federal court in a summary proceeding. That was the view stated by MR. JUSTICE BLACK in his dissenting opinion in *Green* v. *United States*, 356 U. S. 165, 193, with which I agreed then and still agree. There is nothing I can find in the Constitution which permits those who defy a court's decree to be tried in one way and those who defy a mandate of the Congress [1] or an order of the Executive [2] to be tried in another way. Whatever the criminal charge may be, an accused is entitled to the protections afforded by the Constitution—indictment by a grand jury and trial before a petit jury which sits to determine guilt. Determination of guilt by a judge, without these safeguards interposed between the accused and government, marks a continuing erosion of civil rights. The evil is compounded here by reason of the fact that contempt is used to increase a punishment already imposed for an offense as respects which no second indictment could ever be returned. Criminal contempt is used to undermine not only the guarantees of an indictment by a grand jury and a trial by one's peers but also to destroy the protection of double jeopardy.

Plainly this judgment of conviction should not stand.

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[1] See *Watkins* v. *United States*, 354 U. S. 178.

[2] See *Hirabayashi* v. *United States*, 320 U. S. 81; *Korematsu* v. *United States*, 323 U. S. 214.